

BOARD OF ZONING APPEAL     FOR THE  
CITY OF CAMBRIDGE     GENERAL HEARING

November 5, 2009

7:00 p.m.

in

City Hall Ackermann Room -- Second Floor  
795 Massachusetts Avenue  
Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Brendan Sullivan, Member

Douglas M. Myers, Member

Thomas Scott, Member

Tad Heuer, Member

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P R O C E E D I N G

(7:10 P.M.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Thomas Scott, Tad Heuer, Douglas Myers.)

CONSTANTINE ALEXANDER: I'll call the meeting to order. And as is our custom we'll start with the continued cases. And the first case I'm going to call is 9816. Is there anyone here on that matter? Please come forward.

As you know, give your name and address to the stenographer.

ALEXANDRA OFFIONG: Alexandra Offiong, O-f-f-i-o-n-g, 1350 Massachusetts Avenue.

CONSTANTINE ALEXANDER: As you know, just to set the record, this is a case that was continued. It was a case heard. So to continue the case to its conclusion, we need to have the five persons who were sitting

on the case when you first heard it. One of those five is not myself, because I recused myself from the case. One of those five, the Chairman for that case -- the Vice Chairman of the Board is ill, so we have four. We can pursue with the case now, you can go forward if you wanted to tonight. You would have to get four out of four votes. If you continue, it would be four out of five.

ALEXANDRA OFFIONG: We actually submitted something in the file for the continuance for the November 19th meeting.

SEAN O'GRADY: It should be in there.

CONSTANTINE ALEXANDER: On behalf of the petitioner, you're requesting a continuance?

ALEXANDRA OFFIONG: Right.

CONSTANTINE ALEXANDER: And for what date?

SEAN O'GRADY: November 19th.

CONSTANTINE ALEXANDER: The Chair moves that this case be continued as a case heard until seven p.m. on November 19th on the condition that the sign that's already been modified -- you want it to reflect the date. Please change it again to the meeting date.

All those in favor of continuing the case on that basis, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

ALEXANDRA OFFIONG: Thank you very much.

(Alexander, Sullivan, Scott, Heuer Myers.)

(7:15 P.M.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Thomas Scott, Tad Heuer, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair calls case No. 9833, 72 Hamilton Street.

Is there anyone here wishing to be heard on that matter?

(No response.)

CONSTANTINE ALEXANDER: The Chair sees no one being here. The Chair would read into the into the record a letter from James J. Rafferty, Esq. "Please accept this correspondence as a request by the petitioner in the above captioned cases." And the above captioned cases are this case, a continued case and a case that's on our regular agenda, a companion case. "As the above captioned cases to withdraw the application for a variance, BZA case 9833, that's the one we have before us, and its petitioner appealing the determination made by the Building

Commission."

So there is a request for withdrawal by counsel for the petitioner. I will make a motion that we accept the request for withdrawal on this case. All those in favor say "Aye."

TAD HEUER: With prejudice?

CONSTANTINE ALEXANDER: It makes no difference. It is by definition with prejudice. It is effectively a negative decision.

SEAN O'GRADY: The ordinance saying anything after the advertisement is --

TAD HEUER: After the advertisement?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: It's as if we turned them down. That's the same.

All those in favor of accepting the request for withdrawal, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. The case has been withdrawn.

(Alexander, Sullivan, Scott, Heuer, Myers.)

(Whereupon, a discussion was held off the record.)

(7:15 P.M.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Thomas Scott, Tad Heuer, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9815, 100 Cambridge Side Place.

Is there anyone here on that case?

(No response.)

CONSTANTINE ALEXANDER: The Chair notes no one is here. We have, and this by the way is a continued case heard, so we needed the same five members. And we have a letter from the petitioner from Kevin Duggan, D-u-g-g-a-n permit facilitator, Metro Sign and Awning. It's addressed to this Board. "We have been informed that there will only be four board members present for the meeting on November 5, 2009. For this reason we would like to request our case be heard at the next available meeting."

When would the next available meeting be, Sean?

SEAN O'GRADY: They're going to be 12/3.

CONSTANTINE ALEXANDER: 12/3. We have of course, this case has been continued more than once. We have waivers of notice in the file.

The Chair moves that this case be continued until seven p.m. on December 3rd on the condition that the petitioner modify the sign, the posting on the site indicating the new meeting date.

All those in favor, say "Aye.

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. The case has been continued.

(Alexander, Sullivan, Scott, Heuer, Myers.)

(Whereupon, a discussion was held off the record.)

(7:20 P.M.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Thomas Scott, Tad Heuer, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9819, 8 Follen Street.

Is there anyone here on that matter? Please come forward. Please give your name and address for the record.

DOUGLAS OKUN: I'm Douglas Okun, O-k-u-n architect and I'm at 156 Mount Auburn Street, Cambridge.

ATTORNEY GREGORY COGAN: I'm Gregory Cogan C-o-g-a-n. Law firm of Lack and Cogan Cogan, 45 School Street, Boston, Mass, 02108.

CONSTANTINE ALEXANDER: You want a variance to build a garage that's higher than permitted by our Zoning By-Law. Our Zoning By-Law allows 15. Why do you think you're entitled to a variance?

DOUGLAS OKUN: Well, the thing is that the site is such that the garage is nestled in a little teeny alcove and the zone is C-1 I think.

CONSTANTINE ALEXANDER: Right.

DOUGLAS OKUN: And there's no room to expand the garage. And the way the yard is used there is a pool here and a small lawn. And this is turning so there's no way to expand the garage.

CONSTANTINE ALEXANDER: Well, you may not be able to expand the garage with the amount of square feet that you like, but you can build a garage there 15 feet high.

DOUGLAS OKUN: Well, there is a garage 15 feet high.

CONSTANTINE ALEXANDER: Right. There is a garage there. So why should we allow you to build a garage that's higher than what's there now? What is the, what are the --

DOUGLAS OKUN: Hardship?

CONSTANTINE ALEXANDER: -- special circumstances, and the hardship and the special circumstances?

DOUGLAS OKUN: Well, the hardship is that we can't just build any bigger. And the only way to get more space is to build higher.

CONSTANTINE ALEXANDER: Why do you need more space?

DOUGLAS OKUN: Oh, okay.

CONSTANTINE ALEXANDER: You got a 6800 square foot house.

DOUGLAS OKUN: Well, it's chuck full. And I'm sorry, but it is. And the owner -- I've prepared these. You can all take a look at these.

ATTORNEY GREGORY COGAN: The owner has a lot of grandchildren that come to the house, and they have a lot of toys and pool things and bikes and lawn equipment and furniture and what not. And they don't

really have any storage room within the house itself. And that's why they're seeking to just push it up a little bit to provide just additional storage space, because that's the hardship to them because they can't --

CONSTANTINE ALEXANDER: There's no storage space in the basement?

DOUGLAS OKUN: No.

CONSTANTINE ALEXANDER: No storage space in the attic?

DOUGLAS OKUN: No. There's a large mechanical room.

BRENDAN SULLIVAN: How many people live in the house?

DOUGLAS OKUN: Well, two adults and two children. Children are there part time.

CONSTANTINE ALEXANDER: So the grandchildren come every once in a while?

DOUGLAS OKUN: Oh, pretty frequently.

ATTORNEY GREGORY COGAN: Pretty

frequently, yes.

CONSTANTINE ALEXANDER: They don't live there, right?

DOUGLAS OKUN: They don't live there. But they have all this equipment behind the garage now that is for the pool, and the other thing, too, is that, you know, the garage in the proposed scheme would be more consistent with the architecture of the house.

CONSTANTINE ALEXANDER: Can't you build a garage with consistent architecture more than 15 feet high?

DOUGLAS OKUN: Can't get the second story in for storage.

CONSTANTINE ALEXANDER: You keep coming back to storage. It's not a given or a provision under our zoning by-law that you have a right to storage in the garage. Okay? So, if you didn't have storage, you can still build -- and you had to use your 6800 square

foot house, you can still build an architecturally consistent garage.

DOUGLAS OKUN: Hmm.

TAD HEUER: Is there any reason you can't build a garden shed?

ATTORNEY GREGORY COGAN: Well, essentially they're using plastic containers. You know, large Tupperware containers to store all of their pool equipment and other toys and what not.

TAD HEUER: Right. What about right here, can you build a nice garden shed off the lot lines, standard height?

CONSTANTINE ALEXANDER: Here they are.

DOUGLAS OKUN: Well, there's a rendered one in here in your package, too. Here's a rendering.

CONSTANTINE ALEXANDER: The reason I'm being so prickly so far is we take -- this Board's been very tough on height variances.

Generally -- not generally, we often get them for the main structure, the principal structure itself. But we have had it with regard to garages. And I think we need a compelling -- to me anyway, to get my vote you need a compelling case as to why you need to have a garage that's 18 feet high rather than the 15.

BRENDAN SULLIVAN: Can I see the file?

CONSTANTINE ALEXANDER: The whole file?

BRENDAN SULLIVAN: Yes. Sorry.

TAD HEUER: You said the hardship is only increasing three feet. Another way to look at it is you're increasing it 20 percent in height, right? Three feet seems like a small number, someone could look at it and say you want to go 20 percent than what you've got now, it seems a big number.

ATTORNEY GREGORY COGAN: It doesn't

block anybody's views and none of the neighbors have objected as well I would point out.

CONSTANTINE ALEXANDER:

Understood.

DOUGLAS OKUN: It's not seen from the street.

TAD HEUER: But one of your -- is that a condo building or is that an apartment building?

CONSTANTINE ALEXANDER: Right behind you.

DOUGLAS OKUN: Yes, I don't know.

TAD HEUER: So I mean if it were an apartment building, I can't imagine anyone complaining even if it they could see. If it was condos, they would care because they have a vested interest in it.

THOMAS SCOTT: If it's just for storage, do you have to be able to stand up in there?

DOUGLAS OKUN: Yes.

THOMAS SCOTT: Why?

DOUGLAS OKUN: Just to walk and put your stuff in.

CONSTANTINE ALEXANDER: The danger here --

DOUGLAS OKUN: It has a drop down stair.

THOMAS SCOTT: Yes, I see that.

CONSTANTINE ALEXANDER: The danger here given the location, the 8 Follen Street, is over time this is going to become living quarters to somebody.

DOUGLAS OKUN: Oh, no.

CONSTANTINE ALEXANDER: I'm not suggesting that your client will.

DOUGLAS OKUN: Yes.

CONSTANTINE ALEXANDER: It would be a great desire to put a student up there and the city would never know about it. It would have an illegal apartment. That's the

danger of granting you the relief that you're seeking.

DOUGLAS OKUN: I believe the head height isn't sufficient to make it a legal apartment, No. 1. No. 2, to make it an apartment --

BRENDAN SULLIVAN: You show seven foot, eight.

THOMAS SCOTT: It's 7.8. It's more than that.

DOUGLAS OKUN: There's no stairs up to there. And you have to have two means out.

CONSTANTINE ALEXANDER: I'm talking about an illegal apartment. That's what happens in the city. You have many illegal apartments if the space is otherwise accommodating to that. You don't have your two stairs, but if you have high enough ceilings and you've got enough space --

DOUGLAS OKUN: We can make it illegal height-wise. I mean, I don't know

how you'd make an apartment out of that. It doesn't have stairways. It doesn't have plumbing.

CONSTANTINE ALEXANDER: It could be a rented room.

ATTORNEY GREGORY COGAN: If you follow that logic, the entire garage would be an entire apartment.

CONSTANTINE ALEXANDER: First of all you have to give up something. The owner of the property would have to give up a two car garage, and the modification would be external. It would be much more noticeable. Yes, arguably you could get there, but it's more risky in a situation like this. I've probably said more than I should already so I'm going to stop talking.

BRENDAN SULLIVAN: The very last line of your pleadings under the provisions of the ordinance and you're pleading that the proposed garage with a basement.

DOUGLAS OKUN: No, we took the basement off. We took the basement out.

BRENDAN SULLIVAN: Okay. And second floor would allow for urgently needed storage and studio space. So I think that the tilt says studio space, some storage, but it's really studio space is what rang the bell for me.

DOUGLAS OKUN: I'm not sure how that got in the plans.

BRENDAN SULLIVAN: Well, somebody wrote it.

ATTORNEY GREGORY COGAN: It's got pull down stairs. It's certainly not designed for easy access for somebody to come in and out of, and that's why it is a storage area.

CONSTANTINE ALEXANDER: Seven foot high storage area.

TAD HEUER: I mean, I'm not all that -- I understand the point of pull down

stairs, but I don't think anecdotally -- my grandparents had a place that they lived in the summer. The bedroom was accessed by a set of pull down stairs. It was a little chalet by a lake. It wasn't anywhere you wanted to live permanently. They were there a couple months for the summer. But every evening up and down the pull down stairs. Pull down doesn't mean you can't access. Pull down is designed for access.

DOUGLAS OKUN: The house is certainly large enough to accommodate enough people for living space. So I think that that concern, while I can appreciate your expressing it, I don't think it's really that danger of occurring in this kind of configuration of a very large house with adequate bedrooms in it.

TAD HEUER: Have they thought about having a yard sale?

DOUGLAS OKUN: Well, you know, it's

a house that's fully furnished and it's really the outdoor furniture that goes in and out. You know, if you have a long chaise lounge, that's six feet long, you've got to be able to put it somewhere. And certainly if you're going up, you know, a set of stairs that comes down, when you bring it up, it's extending up, so you have to have some head room to be able to pull it up and get it in there.

BRENDAN SULLIVAN: I schlep mine down in the fall and schlep it back up in the spring from the basement. You're relating situations and inconveniences that I really am not sympathetic to to be quite honest. And I don't see any reason why it is an inherent hardship to soil, shape, topography why this cannot comply with the zoning ordinance. I mean, I've read it and reread it, it's been an on going case for a number of weeks. And I've had a chance to review it

three, four times, and I just cannot get over that hurdle that there's a compelling reason to grant the variance.

THOMAS SCOTT: Is there a picture of the existing garage?

DOUGLAS OKUN: Yes. In the file.

BRENDAN SULLIVAN: The delipidated chaise house next to it and so on and so forth. I'm familiar with the whole thing. Some of those items that are in Tupperware storage bins, two years from now they won't be such a problem as children get bigger and don't require mass number of things, but that garage will always be there.

CONSTANTINE ALEXANDER: Doug?

DOUGLAS MYERS: No hardship. This seems a complete thrill. I have not heard anything that persuades me.

CONSTANTINE ALEXANDER: I'll give Tad a chance to keep looking. Tom, anything you want to say?

THOMAS SCOTT: You said you couldn't expand the footprint of the garage at all in any direction?

DOUGLAS OKUN: You could expand it two feet each way to come up to the setbacks of the zoning.

THOMAS SCOTT: Setbacks?

TAD HEUER: You can expand by right two feet each way?

DOUGLAS OKUN: Yes. Five feet from the property line in the C Zone. So we can move it closer to the building in the back by two feet.

TAD HEUER: Right. And then how much each way left and right?

DOUGLAS OKUN: Not much. It's six feet. You can make it a foot bigger.

THOMAS SCOTT: Two feet is the depth of those storage bins. That's all you're really looking for, it seems like you could do something that was by right and still

accomplish the same goal, you know.

DOUGLAS OKUN: I mean, put a little shed behind the garage?

THOMAS SCOTT: A shed or some type of a shed extension off the garage or something.

TAD HEUER: Or a shed. I know people don't like to put sheds in the yard because they like yards. That seems to be the trade off of accumulating a lot of stuff. And if this is a 50-foot line on the property line from the left side to the corner of the in-ground pool, 50 feet that way. And I'm guessing about 40 feet from there to the edge of the house, it's certainly enough space to put an eight-by-eight garden shed.

ATTORNEY GREGORY COGAN: They can turn around in this area though with their cars.

TAD HEUER: No, not turn around with their cars. I'm looking at the other side. I'm looking at the left side between the house

and the pool where it has the area marked. That looks about 50-by-40. I don't know what's there.

DOUGLAS OKUN: Lawn. Just lawn. You can see it here. There's the pool and there's the lawn that he's talking about.

TAD HEUER: How many cars do they have?

DOUGLAS OKUN: Two.

DOUGLAS MYERS: Is there any way the present interior of the space of the garage could be slightly modified to put up shelves or some sort of a level space at the higher level so you could actually put things up there, chaise lounges, and just put them up above the cars?

DOUGLAS OKUN: Not really. It's pretty flat pitch if you look at the profile of the garage. I think, I think they'd like a nice structure, you know, something that didn't look all kind of hacked up and they're

seeking a variance.

CONSTANTINE ALEXANDER: I mean, you can have the nice structure's aesthetically, you just can't get it with the storage space. I mean, you can have -- if they want a nice structure, they can have a nice structure. We're not saying they can't. But to get storage space on top of the nice structure, you have to go up you're saying. And we're saying we don't see the basis, the hardship for allowing you to go up. Make the trade off, a nice structure or find storage space somewhere else on the property.

DOUGLAS OKUN: The height's on the ground floor is kept because the garage doors and the walls and all that. I think that, you know, I happen to go up by the garage today on the corner of Brattle and up Appleton. Are you familiar with that?

CONSTANTINE ALEXANDER: Yes. Came before us.

DOUGLAS OKUN: Did you sit on that one?

CONSTANTINE ALEXANDER: Yes.

DOUGLAS OKUN: This is what I do for a living. I drove by, I thought it was a disaster because No. 1, it looked like a dollhouse compared to the main house and it's totally out of scale. And I think that, you know, as a result of discussion like this, that suppressed the character of that garage and made it totally out of scale with the main house. And I think that zoning has its place and hearings have its place, and in some of these cases, the total affect is more important than the regulations. And I think that that's what we're asking though. We're asking for, you know, leniency on the part of the rules and regulations to create something that has value and utility and is not a detriment to the surrounding people or the neighborhood.

TAD HEUER: Why can't you come forward?

DOUGLAS OKUN: There's not enough turning way as the cars turn around as they come out of the garage.

TAD HEUER: Because of where the existing pool is?

DOUGLAS OKUN: Yes. I mean, I live on Concord Avenue and there's a house that has a gabled roof, and the gable is chopped off and the roof comes up like this. And whoever did it just chopped it all up. And I suspect again it was a result of regulations. And so, you know, appealing to common sense that I think this would be a fine looking structure, it would go with the house, it would have utility, and it wouldn't detract from anybody.

CONSTANTINE ALEXANDER: We set a precedent for the rest of the city. And I mean, if we start to get -- to allow people

to build higher than the City Council has said in its Zoning By-Law the way they want buildings to be built, then we've got a problem.

DOUGLAS OKUN: I think we examine every building on case by case which is the purpose of the Board, if we simply were going to go by the rules, we might as well publish the book and not have the hearing.

CONSTANTINE ALEXANDER: I don't want to get argumentative. Statute work, you know, the statute work. One can change the Zoning By-Law on case by case basis, but you've got to meet certain criteria. You've got to show hardship. You've got to show certain conditions, soil conditions, shape of the lot.

DOUGLAS OKUN: Shape of the lot.

CONSTANTINE ALEXANDER: And to do -- okay. Shape -- that's your argument that the shape of the lot given the way it jogs

back. And your hardship is?

DOUGLAS OKUN: Hardship is the owner doesn't have enough storage space and they would like more space.

CONSTANTINE ALEXANDER: Okay. That's your position. I'm not going to argue with you. Further discussion? Or are we ready for a vote?

BRENDAN SULLIVAN: Public comment?

CONSTANTINE ALEXANDER: I'll ask. I sensed nobody here is on this case.

Anyone wish to speak on this matter?

(No response.)

CONSTANTINE ALEXANDER: Let the record show that no one wanted to speak.

You ready or you wanted more time to study the plans?

TAD HEUER: No.

CONSTANTINE ALEXANDER: Okay. Are the plans that you're proposing -- I've got to make reference to the plans. I want to

make sure I have the right plans. These sheets A1, A2, L1, these three sheets?

DOUGLAS OKUN: Yes. Yes.

CONSTANTINE ALEXANDER: These are the right plans.

The Chair moves that a variance be granted to the petitioner to obtain a variance being sought on the basis of the following findings:

That a literal enforcement of the provisions of the ordinance would involve a substantial hardship to the petitioner. The hardship has been represented to us as being a lack of sufficient storage space on the lot itself and in the structures on the lot.

That this hardship is owing to circumstances relating to the shape of the lot. The lot is not a perfect rectangle or a square, it has a jog, if you will, toward the back. It is in this jog that garage would be located. And because it is a jog, the

setbacks are such that the petitioner believes it only can go up in terms of getting the necessary space for the storage that the petitioner would like to have.

And can grant relief without substantial detriment to the public good because the petitioner, as represented, that it's only three feet higher than what is permitted by the Zoning By-Law. And that the offset to this deviation from the height is a fact that we would have an aesthetically pleasing structure which enhances basically the visual impact of the city in general.

The variance would be granted on the condition that the work proceed in accordance with plans prepared by Douglas Okun and Associates, Inc., there are pages A1, A2 and L1, all of which have been initialed by the Chair.

All those in favor of granting a variance on the basis so moved, say "Aye."

(No response.)

CONSTANTINE ALEXANDER: No one has voted in favor. So five are against. The variance has been denied.

DOUGLAS OKUN: Oh, all right.

CONSTANTINE ALEXANDER: For the record, we should make some further findings as to why we reached the decision we reached so the record is clear.

And I would suggest based on the comments that I've heard is that we have decided not to grant a variance because we have made findings that the petitioner has not satisfied the first two of the three conditions for a variance. Namely, there is no substantial hardship here to the petitioner; and that there are not special circumstances relating to the lot that don't affect the zoning district in general.

All those in favor of those findings as to why we did not grant the variance, say

"Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in  
favor. Thank you.

(Alexander, Sullivan, Scott, Heuer,  
Myers.)

(Whereupon, a discussion was  
held off the record.)

(7:40 P.M.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Thomas Scott, Tad Heuer, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9854, 72 Hamilton Street. Is there anyone here wishing to be heard in that matter?

(No response.)

CONSTANTINE ALEXANDER: The Chair notes that no one has come to the table. We are in receipt of a letter from the counsel for the petitioner requesting a -- I'm not going to read it. It's a letter dated October 20th from James J. Rafferty. I guess I will read it. It's very short. It says, "Please accept this correspondence as a request by the petitioner in the above captioned cases." He's referring to one other case besides this one. "To withdraw this application the petition appealing the determination made by the Building

Commissioner." And that's this case BZA 9854.

I will make a motion that we accept the request for withdrawal. All those in favor of accepting the request for withdrawal, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. The case has been withdrawn.

(Alexander, Sullivan, Scott, Heuer, Myers.)

(Whereupon, a discussion was held off the record.)

(8:00 P.M.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Thomas Scott, Tad Heuer, Douglas Myers.)

CONSTANTINE ALEXANDER: It's now eight o'clock so the Chair is going to call actually three cases at once because they all involve the same property, 45 Foster Street. We're going to call case No. 9569, 9626 and 9855. Is there anyone here wishing to be heard on that?

JOHN GREENUP: Yes.

CONSTANTINE ALEXANDER: Okay.

JOHN GREENUP: I'm the guy. Good evening to all of you. I'm John Greenup from 45 Foster Street. Before we open the cases tonight, because I know at least two of them haven't been opened, I'd like to ask -- I'm going to ask for a continuance until December 3rd.

CONSTANTINE ALEXANDER: Okay.  
Continue all three cases?

JOHN GREENUP: Please.

CONSTANTINE ALEXANDER: When we meet on the 3rd, we'll hear your new case first because that might move -- might move the other two cases.

JOHN GREENUP: If it is successful, we can move the other two cases and decide what we want to do with the other two cases yet.

CONSTANTINE ALEXANDER: Have you signed a waiver of notice for the new case?

JOHN GREENUP: I will do that right now.

CONSTANTINE ALEXANDER: While he's doing that --

TAD HEUER: Does he need to post a third sign on his property?

JOHN GREENUP: We have three signs there now.

CONSTANTINE ALEXANDER: As a matter of fact, I'll give him credit, some of the

signs got washed away and he put up new ones. That's an unusual step that people take.

The Chair moves that these three cases, case No. 9569, case No. 9626, and case No. 9855 be continued until seven p.m. on December 3rd on the condition that with respect to case 9855, the petitioner sign a waiver of notice as a time for decision. And on the further condition that with respect to all three cases, the signs posted notifying of the cases being pending, be modified to reflect the new hearing date, December 3rd.

JOHN GREENUP: That's fine with me. The location is going to be back at the Senior Center?

CONSTANTINE ALEXANDER: The Senior Center.

JOHN GREENUP: I'll adjust the location as well.

CONSTANTINE ALEXANDER: Just on one sign you will need to adjust the location.

JOHN GREENUP: Thank you very much.

CONSTANTINE ALEXANDER: All those in favor of continuing the case on that basis, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Sullivan, Scott, Heuer, Myers.)

JOHN GREENUP: Thank you all.

(Whereupon, a discussion was held off the record.)

(A short recess was taken.)

(8:30 P.M.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9856, 135-137 Elm Street. Is there anyone here wishing to be heard on that matter?

CAMPBELL ELLSWORTH: Yes, indeed.

CONSTANTINE ALEXANDER: Please state your name and address for the record.

CAMPBELL ELLSWORTH: My name is Campbell Ellsworth. I live at 267 Norfolk Street in Cambridge.

STEPHAN DUBOULOZ: Stephan Dubouloz, D-u-b-o-u-l-o-z. I live in 105 Chestnut Street in Cambridge.

CONSTANTINE ALEXANDER: Before we go into the case itself, the next case on our agenda was the case involving the same premises?

CAMPBELL ELLSWORTH: Yes, sir.

CONSTANTINE ALEXANDER: It's an appeal for the decision to issue a building permit. It's my understanding that that

case is going to be withdrawn? We have no letter in the file. I think you are the petitioner?

DOUGLAS DEMAY: That's correct.

CONSTANTINE ALEXANDER: Let the record show that they are going to withdraw the appeal. Otherwise we would take it first. We can proceed with your case. The floor is yours.

CAMPELL ELLSWORTH: Very good. I just want to give you just a bit of history on this site. I believe you've all got the packets. This was a -- is a two-family house. It was built in 1886 as a two-family, but for -- I'll sort of get to these drawings, but the site on the site plan would be easier for me to stand up. This is sort of the as of right condition and the Special Permit. But I'm just trying to give you a sense of what this site is. It's a slightly more than 6,000 square foot lot. It has an an existing

two-family on it. For almost the entire age of the house there was way a very large garage that was used for storage and commercial spaces, and it was right on the -- right on the lot line. The project that is -- we are undertaking is a complete renovation of this two-family house to create two units, and the addition of two units behind that. We have also been granted -- we were granted demolition permit for the removal of that garage, and have currently two as of right permits for these two structures that are in place.

The Special Permit centers on two issues. One is a rearrangement of the parking. Specifically this is the as of right configuration. We seek the relief to be able to pull those cars up against that side lot line to create a more ordered situation for the parking.

CONSTANTINE ALEXANDER: And just so

everybody -- for the other half of the Special Permit. And by doing that you need relief because? What's the reason why?

CAMPBELL ELLSWORTH: Oh, okay.

CONSTANTINE ALEXANDER: Just for the record.

CAMPBELL ELLSWORTH: No, absolutely. Yes. In conversation with all of our abutters, what became clear was that if we were able to obtain that Special Permit, we could recreate a slightly modified, again, as of right structure here that would reduce the mass of that building.

CONSTANTINE ALEXANDER: And the reason you need the Special Permit is because you're parking too close to the lot line?

CAMPBELL ELLSWORTH: That is correct.

CONSTANTINE ALEXANDER: Okay.

CAMPBELL ELLSWORTH: Yes, absolutely.

The second part of the Special Permit request is that on this existing house, that existing house is just over -- that's okay, I'll show it. Is just more than three feet from that side lot line. We request the right to modify the window openings on that side to sort of conform in a better way to the interior plan. And that also requires a Special Permit.

CONSTANTINE ALEXANDER: Have you spoken to the neighbor who is closest to you on that side lot line?

CAMPBELL ELLSWORTH: Yes, absolutely. They've seen the as of -- the Special Permit application.

CONSTANTINE ALEXANDER: And they've expressed no objections to you?

CAMPBELL ELLSWORTH: That's correct.

CONSTANTINE ALEXANDER: The last I saw nothing was in the file.

CAMPBELL ELLSWORTH: I don't know of anything.

CONSTANTINE ALEXANDER: Okay.

CAMPBELL ELLSWORTH: Yes, sir.

So that is in fact, you know, this is again, this is the -- would have been an as of right configuration, meaning any window you see here is contained within an existing opening as per the regulations. And you can see here, for example, this window is slightly modified from that. This one is slightly modified from that. So we're sort of shuffling these around to better coordinate with the interior plans.

CONSTANTINE ALEXANDER: What is that? You can't see that. What's that small window over here? What's that?

CAMPBELL ELLSWORTH: Those are kitchen windows underneath a cabinet. Underneath an upper cabinet. Which is a nice way to bring light in without sacrificing

cabinet space along the kitchen wall.

CONSTANTINE ALEXANDER: Okay.

CAMPBELL ELLSWORTH: Okay.

The -- just two other points I'd like to make.

That if we are granted the Special Permit, we will be -- it won't come before this Board obviously, but this lot, as it had two structures; it had the house, it had a barn, it currently has two curb cuts in it existing. This is what we're requesting. If we are granted that Special Permit to do this, we will also then seek a curb cut modification which will take this car, turn it in -- you know, in the same pattern as these, and that will allow us to consolidate those two curb cuts into one. And in fact, it allow us to give back a parking spot.

CONSTANTINE ALEXANDER: If you want to see the plans, come forward. Anyone who wants to see the plan, please come forward. We're not trying to be secret.

CAMPBELL ELLSWORTH: Right.

So that in itself, this is what is existing. I actually have the curb cut application. Again, it's not exactly the purview of this Board, but if you'd like to see it, I have it. Really, it's to consolidate these two. It's to basically get the curb cut more where this second one is, close this off. That will actually allow, you know, some more space. And this is Doctor Sullivan's garage right here. So that, you know, ideally that will also not be in the way of his -- and the issue about adding another space, I don't know if the city will in fact deem that a space, but it's going to -- it's going to basically close off that whole curb.

CONSTANTINE ALEXANDER: Are there any -- you've had discussions with neighbors I understand?

CAMPBELL ELLSWORTH: Yes, indeed.

And the second -- if we're granted Special Permit, we will be requesting the curb cut.

The second point that is, is that we would like to request -- again, in conversation with the abutters, we want to request that the Board that should you grant the Special Permit tonight, that you also place a condition on the Special Permit that the owner plant a full row of trees along the back, okay? Along the back property line. We have drafted, you know, a short text of that for your review.

CONSTANTINE ALEXANDER: Excuse me. The text for the condition?

CAMPBELL ELLSWORTH: Yes, sir.

CONSTANTINE ALEXANDER: I'll read it into the record at some point. Keep going. Well, I don't want to interrupt your presentation. Do you want me to read it now or later?

CAMPBELL ELLSWORTH: No, basically

that is it.

CONSTANTINE ALEXANDER: Okay. The condition that you were recommending that we impose to the Special Permit should we grant it, it says as follows: "The owner of 135-137 Elm Street shall plant a full row between the property line between his lot and 258 Norfolk Street, a full row of approximately eight to ten feet arborvitae.

CAMPBELL ELLSWORTH: Arborvitae.

CONSTANTINE ALEXANDER:  
Occidentalis or some similar evergreen species, with an exception being made with the existing peach tree for which efforts will be made to be made preserved."

I think if we do grant -- I'm not going to quite -- when I make the motion, I'm not going to do quite this because we're not going to get involved, or the city's not going to get involved about the existing peach tree.

CAMPBELL ELLSWORTH: Right.

CONSTANTINE ALEXANDER: But the condition is that if the trees will be planted, okay. I'm glad to see there's nothing in here about maintaining. Not because I don't want them to be maintained, but that's not the city's job to make sure that you're maintaining them. If they're neighbors and you're counting on them being maintained, you should probably get a private agreement to the extent you can. And it's a private contract matter, but it doesn't involve the city. Mr. O'Grady has better things to do with his life than to go out and check whether the trees are being maintained every other weekend.

CAMPBELL ELLSWORTH: Understood.

THOMAS SCOTT: And that condition is because there's a neighbor who requested that? What's the reason?

CAMPBELL ELLSWORTH: Yes, that came out of a conversation with specifically with

the neighbor across. But we feel that it's a landscape move that will provide a sense of privacy. It will actually benefit more than just that neighbor as well.

CONSTANTINE ALEXANDER: Am I correct is that neighbor is the neighbor that filed the appeal?

CAMPBELL ELLSWORTH: That's correct.

CONSTANTINE ALEXANDER: The one most directly affected.

THOMAS SCOTT: Okay.

CONSTANTINE ALEXANDER: I'm glad you were able to work out an accommodation with the neighbors rather than just bulldozing ahead. Maybe that explains why the appeal has been withdrawn.

Questions at this point from members of the Board?

TAD HEUER: Just a clarification more for Sean. The distance from a window

for a parking space rule, does that come into effect here or no?

SEAN O'GRADY: I think there's exceptions for that and I always got to read them because they're counterintuitive. But that is a good question. We're talking  
640 --

CONSTANTINE ALEXANDER: 644, isn't it?

SEAN O'GRADY: 644.

CONSTANTINE ALEXANDER: B and G.

SEAN O'GRADY: Except for 1, 2, and 3. Oh, in existence at the time. So B is what you're coming for the Special Permit for.

CONSTANTINE ALEXANDER: And G is the operative provision that says we can vary that by the Special Permit.

SEAN O'GRADY: And I think Tad's question regards A. Ten feet within the habitable room, however, open space -- open

parking for 1, 2 and 3 families, yes, so you have a two-family so they fit the exception.

CONSTANTINE ALEXANDER: Anybody here in the audience wishing to be heard on this matter? You have to give your name and address for the record. We're keeping a stenographic transcript of the hearing.

ED SELDIN: My name is Ed Seldin, S-e-l-d-i-n. I live at 145 Elm Street. We are the abutters on the Hampshire Street side.

CONSTANTINE ALEXANDER: The right. If you look at it on the right side?

ED SELDIN: Yeah. We express just one concern with the parking closer to the property line, and that really concerns -- my wife pointed out that there could be a problem with snow removal. So an indiscriminate snowplow person might just --

CONSTANTINE ALEXANDER: Push it.

ED SELDIN: -- push everything up

against the fence and maybe possibly push the fence as well. So our concern, which I think has been I think pretty well addressed, just had to do with the issue of snow removal and possibly placing some stanchions or something to prevent a snowplow from --

CONSTANTINE ALEXANDER: So you have a private arrangement that you said you worked out with the petitioner about the snow removal?

ED SELDIN: No, not about snow removal per se. We hope that some architectural feature will be included that it will make it unlikely that a snowplow driver will just pack snow against the fence.

CONSTANTINE ALEXANDER: In part that I'm trying to make this won't be part of our decision. So that you'll have to work on working it out privately. And that seems to be in good condition.

Anyone else wishing to be heard?

(No response.)

CONSTANTINE ALEXANDER: The Chair notes no one else wishes to be heard. I think we have at least one letter in the file. It's an e-mail actually from Gary Griffin, G-r-i-f-f-i-n addressed to our Board and it's regarding this matter.

Mr. Griffin has his address Oleana Restaurant, an abutter, 134 Hampshire Street. To the Board: "I and my business partner Ana Sortun are owners of Oleana Restaurant at 134 Hampshire Street. Our back terrace abuts the property at 135-137 Elm Street and we share a common fence. As such, we are directly affected by the proposed change in parking. I have met with the architect, Campbell Ellsworth and the owner Stephan Dubouloz to discuss and review the plans for the proposed work and modifications resulting from the Special Permit. After discussing the project and

voicing our concerns, solutions were presented and resolved. I have seen other projects Campbell Ellsworth has worked on" -- I'm going to cut the testimony out if you don't mind. "We believe that the work they're doing is a benefit to the community. We support the revitalization of this location and their request."

And that's all that appears to be in the file. This, of course, addresses the parking. We have nothing in the file that addresses the other half of the Special Permit with the relocation of the windows.

Comments from members of the Board?  
Questions at this point?

DOUGLAS MYERS: Question.

CONSTANTINE ALEXANDER: Go ahead.

DOUGLAS MYERS: I'm not clear about my compass directions. Can you orient me in terms of the compass?

CAMPBELL ELLSWORTH: Yes, basically

this is the south side, so this is the north (indicating).

DOUGLAS MYERS: This is the north. And the Oleana property would be on the northeast side?

CAMPBELL ELLSWORTH: Yes.

TAD HEUER: Northwest.

CAMPBELL ELLSWORTH: Northwest.

DOUGLAS MYERS: And here -- what property, you mentioned Doctor Seldin's garage.

CAMPBELL ELLSWORTH: Right.

DOUGLAS MYERS: This property is Doctor Seldin's property.

CAMPBELL ELLSWORTH: Yes, sir.

DOUGLAS MYERS: And what is the nature of the boundary line between your property and Doctor Seldin's property?

CAMPBELL ELLSWORTH: Currently there is a chain link fence. There was some sort of concrete pad that was in there that

I think perhaps was part of the foundation or a slab on grade for this. It's going to be -- that little piece of concrete will be removed, and I believe we're going to work out with Doctor Seldin sort of a mutually agreeable fence of some sort.

DOUGLAS MYERS: There are trees there now?

CAMPELL ELLSWORTH: There are not.

DOUGLAS MYERS: There are not?

CAMPBELL ELLSWORTH: No. This would have been sort of an as of right -- that was the as of right plan with that five-foot setback. That's what we're asking for relief from to create this plan.

DOUGLAS MYERS: Oh, these symbols here are not trees?

CAMPBELL ELLSWORTH: Oh, I'm sorry, those are symbols for trees. That's what we would have -- we would have done something like that in that five-foot buffer.

DOUGLAS MYERS: It's anticipated that the trees will be in the project as shown in the right-hand side?

CAMPBELL ELLSWORTH: Yes. We have these little triangles that give us an opportunity to do plantings there of some sort, yes.

THOMAS SCOTT: So if you turn that last vehicle, the same orientation of the other three --

CAMPBELL ELLSWORTH: Yes.

THOMAS SCOTT: -- does that mean you're going to fill in this triangle with plantings?

CAMPBELL ELLSWORTH: Yes.

STEPHAN DUBOULOZ: And something for the trash cans to make it sort of nice.

CONSTANTINE ALEXANDER: I'm sorry. My mind was somewhere else. Are you not going forward with the plan as presented? Are you going to change the location of that

parking space?

CAMPBELL ELLSWORTH: No. As I mentioned, if this is granted tonight --

CONSTANTINE ALEXANDER: Right.

CAMPBELL ELLSWORTH: -- the next plan would be to apply for a curb cut to simply rotate this car so that --

CONSTANTINE ALEXANDER: The problem is if we grant relief tonight, we would ordinarily grant it to proceed in accordance with these plans. And then if you're going to flip it around, you have to come back before us I guess in some fashion tonight, we fashion it up for relief that allows you to do this.

CAMPBELL ELLSWORTH: Okay. As I said, I've got -- we have created the entire curb cut application. We actually have sign off from every one of the required abutters already on -- and I could --

CONSTANTINE ALEXANDER: I think we

can fashion verbally --

BRENDAN SULLIVAN: Can you markup a plan to show the new arrangements for the file?

CAMPBELL ELLSWORTH: Would you like me to get the curb cut application plan as it --

CONSTANTINE ALEXANDER: We'd like you to do is -- we'll recess the case. The plans -- the only plans I see in the file that we would tie to is this one over here.

CAMPBELL ELLSWORTH: Yes.

CONSTANTINE ALEXANDER: If you got a better one, that would be great. Take that plan, modify it to show consistent with the curb cut you're hoping to get. Because if you don't get the curb cut, then what happens?

CAMPBELL ELLSWORTH: Well, if we don't get the curb cut, this is what holds. Right. That's because this, this is the solution that works -- this is the solution

that works with those existing curb cuts.

CONSTANTINE ALEXANDER: If you don't get the curb cut, what is your position Doctor Seldin?

MRS. SELDIN: We'd prefer it with the curb cut.

CONSTANTINE ALEXANDER: I understand that. It's not in his control or our control.

MRS. SELDIN: We'd still -- it makes sense just to how many cars -- because we're all wedging cars in.

CAMPBELL ELLSWORTH: So I can make this part of the --

BRENDAN SULLIVAN: So approve two plans.

CONSTANTINE ALEXANDER: But the preferred plan is what they would like subject to getting the curb cut.

CAMPBELL ELLSWORTH: Right. And to answer your question that, again, these three

cars are in the exact same position as these three cars. So those don't move. If we -- okay. So this is the Special Permit requirement, and then this is the -- 1, 2, 3, these three cars are those three cars, this one rotates and that allows us to landscape that.

CONSTANTINE ALEXANDER: Sure.

CAMPBELL ELLSWORTH: Which actually --

THOMAS SCOTT: Which is nicer.

CAMPELL ELLSWORTH: --very attractive for them. Right.

You know, and then we -- then we will simply work out with Traffic and Parking exactly -- basically the curb opening. They'd like to keep it under 20 feet. So that's just under 20 feet. And then it adds back a pretty significant piece of granite.

TAD HEUER: Do you redeem a street parking space?

CAMPBELL ELLSWORTH: Yeah. You know, I don't know. I think it's close, but I don't know technically.

MRS. SELDIN: From the previous owners, yeah, that would be another spot. We had an agreement with them, we could usually park there, but it really wasn't -- (inaudible.)

DOUGLAS DEMAY: We used to park in the front of that garage quite regularly.

MRS. SELDIN: We would basically be getting another spot.

CONSTANTINE ALEXANDER: Well, we need these alternative plans. You need 15 minutes to --

CAMPBELL ELLSWORTH: Can I make that part of the --

TAD HEUER: I mean, that is the plan he wants to submit.

CONSTANTINE ALEXANDER: I know. But if he doesn't get that for the curb cut,

then we need to go back to the -- which plan?

CAMPBELL ELLSWORTH: The plan that is actually in your set.

CONSTANTINE ALEXANDER: Okay.  
This one.

CAMPBELL ELLSWORTH: There's only -- yeah.

CONSTANTINE ALEXANDER: Okay.  
Anybody have any other questions or comments?

SEAN O'GRADY: And this is for plans as it relates to parking, but not --

CONSTANTINE ALEXANDER: Only to parking. I'm going to make it very clear. You know your plans are doing everything else as a matter of right, but for whatever reason you decide to modify as you go forward your plans with regard to the structures, nothing we do tonight will give you the right to do that. Any modification would have to be still as of right. And the modification

requiring zoning relief, our relief tonight would not in any way give you zoning relief.

CAMPBELL ELLSWORTH: Understood.

TAD HEUER: Or if the building permit you're issued under as of right turns out to make that parking impossible the parking scheme goes out the window as well.

CAMPBELL ELLSWORTH: Well, we had already had it engineered, so I hope my surveyor is correct.

DOUGLAS DEMAY: May I ask a question?

CONSTANTINE ALEXANDER: By all means. You need to identify yourself.

DOUGLAS DEMAY: Doug DeMay, 258 Norfolk Street. As far as the interior layout and the way that they've redesigned it, which we support, is that also something that flows into the Special Permit granting or is that also --

CONSTANTINE ALEXANDER: No. The

relocation of the windows, as you know, on that one side. But anything else interior wise is not a zoning matter. Zoning basically deals with the external dimensions.

MR. DEMAY: So the Special Permit doesn't lock in any interior, just the exterior area?

CONSTANTINE ALEXANDER: Relocate the windows and to locate the parking what they're showing. Nothing else. Everything else is they either have to do it as a matter of right or file a separate petition and come back before us and you'll receive notice of that.

DOUGLAS DEMAY: Okay.

CONSTANTINE ALEXANDER: Further comments? Ready for votes? We'll take two votes. We'll take one on the windows and then one on the parking.

The Chair moves that a Special Permit

be granted to the petitioner to relocate windows in a setback as set forth in a plan -- this is the plan?

CAMPBELL ELLSWORTH: Yes, sir.

CONSTANTINE ALEXANDER: In a single sheet, the plan dated 11/3/09, initialed by the Chair.

A Special Permit would be granted on the basis of the following findings by the Board:

That you cannot meet the requirements of our ordinance because this is a non -- this is a non-conforming structure, pre-existing our Zoning By-Laws. And it violates our setback requirements. So any modification to this window treatment on the wall requires Special Permit, the relief being Special Permit.

That granting the relief being requested with regard to the relocation of the windows would not cause congestion, hazard or substantial change in established

neighborhood character.

That the continued operation of adjacent uses would not be adversely affected by the nature of these changes. In that regard the Board notes that the petitioner has represented to us that he has spoken to the abutters mostly affected by the relocation of the windows and has shown the proposed relocation, and the abutter has expressed no objection to the petitioner. And our files indicate no exceptions, no complaint.

And that doing the relocation of the windows would not create nuisance or hazard to the detriment or the health, safety or welfare of the occupants of the city. In fact, the window treatment would facilitate the occupancy of the structure because it makes the window layout more rational relating to the interior uses of the building, and does not affect the privacy of

abutters as evidenced by the lack of any objections by any abutters.

And that the granting relief would not impair the integrity of the district or adjoining district. The relief in fact is modest in nature. It's really just putting windows on a side of a non-conforming structure.

As I said, the Special Permit would be granted that the relocation of windows would be in accordance with the plan submitted by the petitioner and initialed by the Chair.

All those in favor of granting the Special Permit on the basis so moved, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. That Special Permit has been granted.

(Alexander, Sullivan, Scott, Heuer, Myers.)

CONSTANTINE ALEXANDER: The Chair further moves that a Special Permit be granted to the petitioner to relocate parking spaces on the side in question in one of two ways, and subject to a condition that will be imposed by the Board:

The reason the petitioner cannot meet the requirements of the zoning ordinance is that it is again an older structure, non-conforming, and to parking -- there's no way of providing the requisite parking on the lot as requisite under accordance with the Zoning By-Laws, and meeting the landscaping requirements that both the petitioner and abutters' desire without -- and still comply with our zoning ordinance.

That granting the relief would not cause congestion, hazard or substantial change in established neighborhood character. In fact, traffic would be improved by the location of these four onside

parking spaces, and position as they're proposed with regard to maintaining appropriate landscape barriers to adjoining properties as will be conditioned later in our decision.

That the continued operation of adjacent uses will not be adversely affected by the proposed relocation. This will result from the fact that there is going to be landscaping provided to minimize the impact of the intrusion, it's a setback, that the proposed relief is being sought. The reason why the relief is being sought.

And that there would be nuisance or hazard created to the detriment of the health, safety or welfare of the occupants of the proposed use.

And that the proposal would not impair the integrity of the district. In fact, what this is will rationalize parking on this lot. Do so in a manner that minimizes the impact,

visual otherwise, on abutting properties.

The Special Permit would be granted in accordance with the following conditions:

That the work proceed in accordance, the layout I should say, the layout of the parking be in accordance with plans dated -- there's no date here. It's one page.

CAMPBELL ELLSWORTH: That's the curb cut application.

CONSTANTINE ALEXANDER: The curb cut application is submitted here.

THOMAS SCOTT: It's dated.

CONSTANTINE ALEXANDER: The date is September 26, 2009. This parking plan shows four diagonally shaped parking spaces on the lot.

That if this plan cannot proceed because it does not have the requisite curb cuts, then the work would proceed, the parking would be laid out in accordance with

the plan submitted by the petitioner. This one is dated 9/21/09. It's numbered Z1.3 initialed by the Chair. This plan shows three diagonal spaces and one that's basically perpendicular to the street. So it -- that plan would proceed only if you cannot get the curb cut. If you get the curb cut, then you must proceed in accordance with the first plan I've identified.

CAMPBELL ELLSWORTH: Yes.

CONSTANTINE ALEXANDER: And with respect to the lot line between the lot in question and 258 Norfolk Street, that a full row of trees be planted along the lot line. Trees being approximately when fully grown to be eight to ten feet high. These trees will supplement the existing trees that are on the property right now.

By virtue of granting these conditions, we further, returning to our motion, believe that the relief being sought regarding

parking would not impair the integrity of the district or derogate from the intent and purpose of the ordinance.

All those in favor of granting the Special Permit with the conditions so made, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Good luck.

(Alexander, Sullivan, Scott, Heuer, Myers.)

(Whereupon, a discussion was held off the record.)

(9:00 P.M.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Thomas Scott, Tad Heuer, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9857, also involving 135-137 Elm Street. Is there anyone here wishing to be heard on that matter?

NELL MA'LUF: That's the one we withdrew.

CONSTANTINE ALEXANDER: We'll open the case. State your name and address for the record, please.

NELL MA'LUF: Nell Ma'Luf, M-a-'-l-u-f.

CONSTANTINE ALEXANDER: Mrs. Ma'luf, it's my understanding you wish to

withdraw your application?

NELL MA'LUF: Yes.

CONSTANTINE ALEXANDER: And you understand the effect of the withdrawal on your application?

NELL MA'LUF: No.

CONSTANTINE ALEXANDER: It means respectfully it's as if you were denied. So you can't next week or next day decide to institute this appeal. You can't challenge the building permit that's already been issued.

NELL MA'LUF: Okay.

CONSTANTINE ALEXANDER: If the new building permit is issued, you have a right to -- no, the building permit.

So if a modification is proposed, let's say hypothetically, and a new building permit is issued to do that, you have a right to challenge that. But you can't change your mind with regard to the building permit that

already has been issued. You understand that?

NELL MA'LUF: Got it.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that the petitioner request to withdraw their appeal be approved. All in favor.

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Thank you. You're withdrawn.

(Alexander, Sullivan, Scott, Heuer, Myers.)

(Whereupon, a discussion was held off the record.)

(9:05 P.M.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Thomas Scott, Tad Heuer, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9858, 41 Hawthorn Street. Is there anyone here on that matter?

DOUGLAS OKUN: I'm not going to say a word.

CONSTANTINE ALEXANDER: You're entitled to say a word. Please come forward. Okay. For the record, please give your name and address. Starting with you, Mr. Okun.

DOUGLAS OKUN: I'm Doug Okun, 156 Mount Auburn Street, Cambridge, Mass.

EDWARD FEHRMANN: Ed Fehrmann, F-e-h-r-m-a-n-n, 47 Marsh Street, Belmont,

Mass.

MITCHELL BURY: Mitchell Bury,  
B-u-r-y, 215 Commonwealth Avenue, Boston.

CONSTANTINE ALEXANDER: And you're  
here seeking a Special Permit to add dormers  
according --

DOUGLAS OKUN: We're going to change  
that word dormers because we're not doing  
dormers anywhere, we're doing skylight.

CONSTANTINE ALEXANDER: I think  
that's a more accurate description.

DOUGLAS OKUN: Okay. Well, let me  
just, since we drew all these up, I'll kind  
of present them.

CONSTANTINE ALEXANDER: If there's  
anyone here interested in this case and you  
want to see the plans, please come forward.

DOUGLAS OKUN: So this is a plan of  
the building in dark. This is Hawthorn  
Street. So that the narrow part of the  
building faces the street. It has a

courtyard and abuts the park behind it. The essence of what we're looking for is that in certain apartments on the building, what we're doing is we're cutting into the roof and creating a window inside but nothing sticks out of the building.

TAD HEUER: So the rooms have no light now or do they get it from a different source?

DOUGLAS OKUN: This was a loft. This was the attic. And so we have legal amount of windows here and skylights. So we meet those codes.

TAD HEUER: Right. So you're creating new space that formerly unused kind of space?

DOUGLAS OKUN: Right. But we're not adding FAR, right.

DOUGLAS MYERS: Before you put that away, can I ask you a question, please. With respect to this drawing, where, where are the

streets and where is the park?

DOUGLAS OKUN: It doesn't make too much because this happens several places in the building. I can show you on elevations.

DOUGLAS MYERS: Okay.

CONSTANTINE ALEXANDER: Why don't you do that.

DOUGLAS OKUN: Okay.

BRENDAN SULLIVAN: How many total locations are there, Doug?

DOUGLAS OKUN: I don't know. I'll get to that.

This is a larger detail of that thing. We've already met with Historic Commission and they've approved this. And this is slate and cheek walls are slate. And this is copper. And these fellows are going to do the whole building slate roof and rubber roof, gutters and all that. Like I said, we've had two meetings with the Historic Commission, and it's all right.

CONSTANTINE ALEXANDER: Do we have a letter of support from the Historical Commission? Do you have a letter of approval of support from them?

DOUGLAS OKUN: I do. I do.

THOMAS SCOTT: Is it in the file?

DOUGLAS OKUN: I think it's in the file. They also sent me a copy today.

CONSTANTINE ALEXANDER: It is. I'll read it. Approved the project at a public hearing.

DOUGLAS OKUN: Okay.

CONSTANTINE ALEXANDER: Thank you.

DOUGLAS OKUN: I just want to go back to this one here. You asked how many times this takes place? So the answer is --

CONSTANTINE ALEXANDER: Hold it up if you would. Thanks.

DOUGLAS OKUN: It's hard to see because it's dark. But I have 1, 2, 3, 4, 5, 6, 7, 8 and 9 places on the building. And

there's some elevations.

So, let's see, this is west No. 4. This is viewing it from the park. So there's two of these recesses. From Hawthorn Street there's none. And this is the long elevation right here I believe. Is that right?

EDWARD FEHRMANN: Yeah, that would be like through the alley there more or less.

DOUGLAS OKUN: That's this one here. So this is that part.

EDWARD FEHRMANN: Oh, okay.

DOUGLAS OKUN: And courtyard and then here. So there's a couple here. And then that's the long elevation here for this.

TAD HEUER: And on the plans that you submit there's a prominent notation on each of these about the location of the air conditioning condenser units. We don't care about those or do we?

CONSTANTINE ALEXANDER: I don't think from a zoning point.

DOUGLAS OKUN: Not from zoning.

But what happened is since then, we as the architects drew them. But we have one now that lay flat like a table and you cannot see them from the street.

TAD HEUER: Okay.

BRENDAN SULLIVAN: And, again, the purpose of the skylights? Are they venting or are they just fixed?

DOUGLAS OKUN: They're venting lights.

BRENDAN SULLIVAN: Venting.

DOUGLAS OKUN: Yes.

BRENDAN SULLIVAN: And the purpose is to allow light fenestration into a loft area?

DOUGLAS OKUN: Yes.

BRENDAN SULLIVAN: Will the ceiling of the loft area be taken down to allow into the apartment or is it going to remain separate from the apartment?

EDWARD FEHRMANN: It's going to be --

BRENDAN SULLIVAN: It's accessible from the apartment?

EDWARD FEHRMANN: It's accessible from the apartment, exactly.

BRENDAN SULLIVAN: So I mean as I side, what's the purpose then of the loft area?

EDWARD FEHRMANN: Right now it's a little bit of storage. But we're going to try to make it a little bit bigger. Some of the apartments are a little bit small and they don't have a bedroom. We're going to try to make a little room up there.

BRENDAN SULLIVAN: So it's more functional in that space?

EDWARD FEHRMANN: Yes. It's a big space up there and there's no use of it now so we're trying to get some use out of it.

BRENDAN SULLIVAN: Okay.

TAD HEUER: So, what are you here for? Are these windows in the setback?

CONSTANTINE ALEXANDER: Setback.

TAD HEUER: Is that what the issue is now?

DOUGLAS OKUN: No. Well, first of all, nothing sticks out. So we're not enclosing in the setback. So it's a change to a non-conforming building. So we're seeking a Special Permit.

CONSTANTINE ALEXANDER: It's a skylight. It is a skylight in the setback. It's non-conforming because you're too close to the lot line.

DOUGLAS OKUN: Yes.

CONSTANTINE ALEXANDER: We're now accurately called a skylight.

DOUGLAS OKUN: Yes.

CONSTANTINE ALEXANDER: And the case like before, you're moving windows around?

DOUGLAS OKUN: Right, yes.

CONSTANTINE ALEXANDER: Skylight in a setback?

TAD HEUER: Which setback?

CONSTANTINE ALEXANDER: Side yards.

DOUGLAS OKUN: Side yards.

BRENDAN SULLIVAN: And the setback is how many feet?

TAD HEUER: It's just not in the documentation that we're going to vote on so I need to know that.

CONSTANTINE ALEXANDER: No, you're right.

BRENDAN SULLIVAN: Is this B District?

TAD HEUER: Yes.

BRENDAN SULLIVAN: So the setback would be seven and a half sum of 20 rear.

SEAN O'GRADY: For the side, yes.

BRENDAN SULLIVAN: It's probably the rear which probably triggers a lot of

this.

SEAN O'GRADY: Yes. It's only a couple in the rear that have a setback problem, right?

DOUGLAS OKUN: Yeah.

SEAN O'GRADY: I think most of them are as of right.

DOUGLAS OKUN: Most of them are so high up and set in because they're right by the ridge.

BRENDAN SULLIVAN: So it's really the rear ones in this district would be 25 feet, they fall within that?

DOUGLAS OKUN: Yes, I believe so.

SEAN O'GRADY: It could be up to 25 if it's a deep lot, yes.

BRENDAN SULLIVAN: So that's what it is. It's really not all of them that trigger this. It's a couple of them. We're getting the plan in toto if you will.

TAD HEUER: Right. What about the

roof skylights? Are any of those in the setback that we're approving or not?

DOUGLAS OKUN: No, none of those are.

TAD HEUER: I have to say I'm not thrilled with the plan in front of me that I'm voting on even though the relief seems relatively minor. Because I'm being told that I'm doing something which is not in assemblance to what I read on Monday.

CONSTANTINE ALEXANDER: Wish to comment on that?

DOUGLAS OKUN: I don't know what you read on Monday.

TAD HEUER: I read this file on Monday. And if the relief is windows in a setback, I have no plot plan that shows my setback where the windows are in. I don't even know if relief is necessary. And if it is, I want to know which of these nine items I'm voting on are necessary, and what is not

in my purview at all to be voted on. And if there are skylights in addition to the dormer type skylights that are vertical, and those are in a setback, then those are things we need to approve or not approve, but I can't tell because I don't have a plot plan that shows me the setbacks.

DOUGLAS OKUN: You're right.

TAD HEUER: I have no problem with these things going on in the building. It's advantageous. But in terms of enforcement, I if I hand this over to Sean and say, Sean, these things can be conforming, these things need a permit, A. Then he says permitted, what did you permit? I have no clue, I don't see that. Then we have a problem. So it's more of a procedural concern with me than a substantive concern for that useful project. But there's nothing to tie what has just been said here by what's actually happening to what's in the file.

DOUGLAS OKUN: To a real drawing. I can produce a drawing for you. I'd be glad to do that. I think what happened is that this project evolved, and originally we were going to have dormers that literally projected.

TAD HEUER: Right.

DOUGLAS OKUN: So the drawing that you're looking for didn't really make any difference because it was in violation. But now that we're doing what you're looking for, and so I apologize and I can produce that if you like me to.

TAD HEUER: I would feel more comfortable seeing that.

CONSTANTINE ALEXANDER: We would have to continue the case another night.

DOUGLAS OKUN: Okay.

CONSTANTINE ALEXANDER: We can re-adjourn. If you can do it the next half hour and come back with the drawings.

DOUGLAS OKUN: I could if I have the book -- all I need.

CONSTANTINE ALEXANDER: You mean the file?

DOUGLAS OKUN: Not the file. I need the formula for the rear yard setback.

SEAN O'GRADY: I can help you with that. You do have a plot plan?

DOUGLAS OKUN: Yes.

TAD HEUER: The plot plan where the setback comes in?

DOUGLAS OKUN: I can do that.

TAD HEUER: We know we're here until 9:45 so we can continue this out until some other folks come through and you come back.

DOUGLAS OKUN: Do you want to spend a couple minutes?

BRENDAN SULLIVAN: Do you have a certified plot plan?

DOUGLAS OKUN: Yes, we do. It's right here. I believe it's part of your

package. Yeah, he's got it.

CONSTANTINE ALEXANDER: Right here.

BRENDAN SULLIVAN: That's okay if you want to go through the attempt.

CONSTANTINE ALEXANDER: We'll recess the case until after the conclusion of our final case for the evening and you can come back.

DOUGLAS OKUN: Yeah.

CONSTANTINE ALEXANDER: Okay. We're going to need -- you want to use this plot plan or -- we want to leave it in our file. Whatever one you come back with that's all.

DOUGLAS OKUN: Okay.

CONSTANTINE ALEXANDER: The case will be recessed until immediately following the last case in our regular agenda.

EDWARD FEHRMANN: Thank you.

DOUGLAS OKUN: Thanks a lot.

(Case recessed. Discussion was

held off the record.)

(9:15 P.M.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Thomas Scott, Tad Heuer, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9859, 2419 Mass. Avenue/1-29 Camp Street. Is anyone here wishing to be heard on that matter?

If any of the parties who are here besides the petitioner want to get closer or look at anything that's presented or you can't hear or you can't see what's put before you. Before we -- Mr. O'Grady is not here, but before, first give your name and address

for the record.

ATTORNEY ANDREW BRAM: My name is Andrew Bram, B-r-a-m. I'm an attorney with the offices at 43 Thorndike Street in Cambridge. I represent the petitioner, Codacam, LLC.

GREG COHEN: My name is Greg Cohen, C-o-h-e-n. I'm the property owner. My address is -- the management office address is 1B Gregory Island Road, South Hamilton, Mass. 01982.

CONSTANTINE ALEXANDER: Before we get into the merits of the case, there a couple of issues regarding notice. And actually one issue regarding notice. One issue regarding whether the case should be continued.

The issue on notice, Mr. O'Grady advised me that he was contacted by an interested party, or I should say a citizen of the city saying there was improper notice

on the building. That the only notice of the Planning Board hearing and not of our Zoning hear tonight. Mr. O'Grady advised me he checked the building. I did as well. We did this both yesterday, separately not together, separately. And I noticed that there is a sign, there is a sign for the Planning Board hearing on the side that sort of faces towards Massachusetts Avenue. But there is a sign advertising this hearing tonight in the front door of the structure, the main door. That main door, however, sort of opens on Cameron Street, Cameron Avenue and not on Massachusetts Avenue, which is a little odd why you have a Massachusetts Avenue address. But anyway, you're supposed to post, I say supposed to, Massachusetts Avenue not on Cameron. Now, in my judgment, and the floor is open to members of the Board to see how they feel, my judgment I feel you can go forward. Because No. 1 you did post

on the front door, the principal front door of the structure which happens to be on Cameron Avenue. The purpose of the notice is to be sure the citizens of the city, or particularly those in the neighborhood are advised what's going and what that relief is being sought. And there seems to be no question that the neighborhood is well aware of what's going on with respect to the structure. So I think there's been actual notice. So I for one am satisfied that we can go forward with the case and not have to continue it to move the sign from the front door to a side of the building around the corner, if you will, to Mass. Ave. But I throw the matter up to members of the Board if they feel any differently.

MICHAEL BRANDON: Mr. Chairman, can I comment?

CONSTANTINE ALEXANDER: You'll have an opportunity. You want to wait. People

want to wait. We can hear from Mr. Brandon. Maybe we should do that.

MICHAEL BRANDON: My name is Michael Brandon. I live at 27 Seven Pines Avenue which faces the property down Camp Street. And I did have a conversations with Maria Pacheco, and today with Sean O'Grady expressing concerning that this hearing had not been properly noticed in accordance with the ordinance. Previously, and in other words, yesterday or the day before, I CC'd the Board on a request that we made to the owner on -- I made on behalf of the North Cambridge Stabilization Committee for other reasons asking that the hearing be opened if it were properly advertised, but immediately continued without a hearing. Do you want me to discuss the reasons for that?

CONSTANTINE ALEXANDER: No, we're going to take it up next.

MICHAEL BRANDON: So on the notice

issue, I and other neighbors who are here tonight can testify that the notice that you mentioned on Cameron Avenue has not been up for the required two weeks before the hearing. That went up more recently than that. I'm not sure what day it went up. I saw it for the first time today. The ordinance requires and you may want to pull out and read the specific section. But not just large property like this, this is not a single building that's impacted. It's a large property that they are seeking to subdivide that covers almost two city blocks: The address that is -- the two addresses that are mentioned, 2419 Mass. Ave. and 1-29 Camp Street which involves two buildings and a parking lot had no notice of either the Planning Board hearing or this hearing. The only notice that's been posted at the site, and I believe it was not in the adequate time, is on Cameron Ave. for a totally different

street. While it is true that many neighbors are concerned about this, and I think you may have heard from others requesting a continuance, I got CC'd after five o'clock from requests from immediate abutters who are in negotiations with the potential buyer of the piece of the subdividing property, and did not want this hearing to continue until they pursue those further. So they decide whether -- what position they want to take on what's being proposed. If you read that section, it seems to me quite clear that more than one notice is supposed to be posted on a property of this size. That didn't occur. And for that reason alone I think legally it would be a mistake to proceed because it would be a flaw that, you know, potentially could result in litigation to overturn not on the merits of the case per se. I also think it would be easier for the Board, allowing some additional time to try to narrow some of the

areas of conflict that there are between certain abutters.

CONSTANTINE ALEXANDER: You're mixing two issues, and that's fine, because they are related, I accept that.

MICHAEL BRANDO: There's one last piece. I believe there's language indicating that the petitioner is supposed to submit to the Board a site plan showing where the signs will be posted and even describing how they will be affixed as it needs to be readily visible from the street. So I would urge you -- another notice related issue is the switch of the location. And I'm not sure what that particular panel says or what the advertisement said as far as the location of the building, but I expected a bigger turnout. I think partly because of the hour and partly because of the limited notice should be out there.

And finally, just the description of

what is before the Board I think is not adequately conveyed what is involved. It appears to be -- oh, it's just a change in ownership, and that everything else will stay the same and that's implied in some of the material in the application that's submitted. There would be no physical changes. In fact, according to Mr. Cohen who did come to the last stabilization committee was not widely attended by abutters, although there were at least five close neighbors there, indicated that should this be granted, it will result in changes to that. So I think it's really important to get, you know, those parties, have a fair opportunity to at least be heard on this, particularly since the previous variance that was granted by the Board was a result of basically a consensus after a lot of discussion with the neighborhood about what would happen with these properties. And

people I believe are not fully aware that what is before you is more than just a simple change. And also that on the advertisement, there's a section of the ordinance that advertised as being sought to be waived which is not on the application that was submitted to the Board. And I understand that Ranjit may have reviewed it and said they failed to mention this, and so he put it there, but I question the propriety of staff, you know, doing that at least without calling the petitioner and asking them to adjust it. So that's basically my pitch on that.

CONSTANTINE ALEXANDER: Okay.

You've raised a number of issues. Let me just start with one that I have was going to raise anyway. You know there's a question about notice. We haven't made our decision on the Board whether or not you've made proper notice. I want representation from you that it was up for 14 days. We know there's a sign

there now. You as an attorney are fully aware that if we were to go -- if we were to decide there was proper notice, and if we were to grant relief, and someone wanted to challenge our decision, they can attack the decision collaterally through the fact that there was not proper notice. The Board was wrong and there was not proper notice. All of this is by way of preamble. Do you want to go forward?

ATTORNEY ANDREW BRA: We want to go forward. And I'm prepared to testify. I put the notice up personally.

DOUGLAS MYERS: It would be very helpful to me if the petitioner had a chance to respond to the statements that are made before we discuss it or we've made a decision.

ATTORNEY ANDREW BRAM: In your file is the form that one signs when one picks up a placard. I signed that form whatever date it is, the date I went to the building and

personally put the sign up. There's no question it was more than 14 days.

CONSTANTINE ALEXANDER: The placard was picked up on the requisite --

ATTORNEY ANDREW BRAM: I put it up.

CONSTANTINE ALEXANDER: Whether you did or someone else did, you're representing it's been done. You're telling the Board it's been up for 14 days?

ATTORNEY ANDREW BRAM: Absolutely.

CONSTANTINE ALEXANDER: And the question is, is it up in the right place? Which is Mr. Brandon's point and what we're going to discuss. Do you want to speak to that issue? And I'm going to read, by the way, into the record what the requirements of our Zoning By-Law are with regard to notice.

ATTORNEY ANDREW BRAM: Yes, I understand that. In my view the simple answer is that this is the main entry of the building. It's a rounded corner of Mass.

Ave. and Cameron. It is the only entrance to the building. There is no place around here along the Mass. Ave. facade of the building that anywhere says 24 Mass. Ave. There is no entry. It is the only entry.

CONSTANTINE ALEXANDER: How did it get the address of 2419 Mass. Ave.?

TAD HEUER: Isn't there a service entrance?

ATTORNEY ANDREW BRAM: Maybe it's not a street, Mass. Ave. street address on it. This is the main entrance. This is where the Fed Ex drop box is. This is the main entry of the building. All right? You send mail to 2419 Mass. Ave., this is where it gets. This is the third hearing we've been at before this Board in the last couple of years. In each of the two prior hearings I also posted the notice, and I posted it in the same place with no complaint from either the Board, the staff or any of the neighbors. There's no

question in my mind that this is the proper location.

The text of Exhibit D or Addendum D that you're about to read, says it's supposed to be posted somewhere where the public can see it without really trespassing on the property. This is the logical place to put that kind of a notice. As you yourself said, Mr. Chairman, this building has been the subject of intense neighborhood discussion going back probably the three or four years that Mr. Cohen has owned the building. There has been countless meetings. This plan changing this to housing began a discussion with the neighbors last, probably as early as June. There have been countless meetings between the proposed purchaser of the this building and the neighbors. There's no question in my mind that anyone that was interested in this has had notice. It was published in the paper. And I think

the reason the Board adopted the placard notice is perhaps not everybody reads the paper or reads the tombstone notices. But in this case anyone interested in this building in the neighborhood group, which I think you also know from your own experience, has an extensive e-mail tree of people who get notice of anything that's happening in this area. They all know about this, okay? And for Mr. Brandon who came to us at the eleventh hour and said we we'd like to continue this because we're not satisfied with what you're proposing to do with this building. And we said we don't want to continue it. It's a subdivision we've been going on around with months. Then and only then we don't want to go for a continuance, he comes up with an idea that the notice was improper. And part of his reason if you read his e-mail, is that he was distressed that the hearing would perhaps be late this evening. And I think he made his

notice if it were a continued notice, it would go on seven o'clock which would be more convenient for him and others in his opinion. I think it's a specious request that this be delayed or this notice be considered defective. And with respect to the idea if this were litigated, that some court would find this is improper place for this, I don't think so. I'd be happy to defend that case.

CONSTANTINE ALEXANDER: Let me read into the record -- I'm sorry, I didn't mean to cut you off.

ATTORNEY ANDREW BRAM: Okay.

BRENDAN SULLIVAN: One question, where was the Planning Board notice posted?

ATTORNEY ANDREW BRAM: Next to mine.

BRENDAN SULLIVAN: And the Planning Board notice has the address of Mass. Avenue?

ATTORNEY ANDREW BRAM: I believe it does.

BRENDAN SULLIVAN: And the Planning

Board hearing was attended?

CONSTANTINE ALEXANDER: I see your hand. I just want to read into the record the notice requirements of status. You want to speak on the question of notice?

FEMALE AUDIENCE MEMBER: Yes.

CONSTANTINE ALEXANDER: Okay. Just give me a second. Just so it's in the record, I'm reading from 10.4, 2.1 of our Zoning By-Law. And it says: "Any applicants for a variance or a Special Permit shall be required to erect and maintain in legible condition one or more public notification panels at the site per which the variance or Special Permit relief is requested." You have to secure -- I'm now going to paraphrase -- secure the panels from the Building Department. "The location of any required panels shall be located on a site plan included in the application documents." Blah, blah, blah. "Which location is

subject to the approval of the respective departments. The following requirements shall apply:

"Panels shall be securely mounted on the subject lot at the street line or within the property, but in any case not more than 20 feet from the street line. However, wherever located, the panel shall be visible, easily identifiable and legible to persons passing by on the public street without the necessity of trespass on to private property." And then it says "For lots having street frontage of 200 feet or less, one panel shall be installed. One additional panel shall be installed for each additional 500 feet of street frontage."

And then they have to -- the panels have to be installed not less than 14 days from the public hearing. And you've represented to us that you've met that requirement.

"They shall be maintained in a legible

condition until we've reached our decision."

And I think that's all -- the rest deals with the size of the sign. But the sign is provided by the City of Cambridge. Those requirements presumably are already met. So that's what we're dealing with. That's the requirements of the zoning ordinance.

Now, before we get further discussion, you wanted to be heard? You need to come forward and give your name and address for the stenographer.

ROBIN YEARWOOD: My name is Robin Yearwood. I live at 29 Cameron Ave. And I, I did not notice the sign until the beginning of this week. I have a dog that I walk by that building three times a day.

CONSTANTINE ALEXANDER: But you have noticed a sign?

ROBIN YEARWOOD: This week, Monday. I did notice the sign. But it hasn't been up there for 14 days. I also have to beg to

differ about the other notices. Last meeting in August for the Planning Board we had to continue it because the signs did not go up in time. And they have three signs up that time. This time there's only the one. I've been looking for the sign because I didn't know where the meeting was going to take place. So, you know, I only noticed it on Monday. If it went up last week, I did not see it. And like I said, I live there. I walk my dog passed that building everyday. So, you know, that's all I have to say.

BRENDAN SULLIVAN: I'm sorry, what was your address?

ROBIN YEARWOOD: 29 Cameron Ave.

BRENDAN SULLIVAN: And the last name?

ROBIN YEARWOOD: Yearwood.

MICHAEL BRANDON: Mr. Chair.

CONSTANTINE ALEXANDER: You've had your chance. Wait a minute. You've had

your chance to speak. Unless you're going to -- I don't want to get into a debate with you, Mr. Brandon.

MICHAEL BRANDON: It's just a question of the Board of how much street frontage is at the property because --

CONSTANTINE ALEXANDER: We're going to get there.

MICHAEL BRANDO: Okay, I'm sorry. I don't maintain that the sign is in an improper place necessarily, but the very insufficient signs at the places where they should be.

CONSTANTINE ALEXANDER: Brendan, you have the street frontage plan there?

BRENDAN SULLIVAN: Yeah. 13  
Cameron Avenue, Mrs. Year wood?

ROBIN YEARWOOD: 29.

BRENDAN SULLIVAN: Oh, 29.

KEVIN YEARWOOD: I am at 13, 15.

BRENDAN SULLIVAN: Just for the

record, 93 notices were sent out and there were six that were returned. So, we should consider that 87 notices for this are in effect to the neighbors. Abutters, abutters to abutters, within 300 feet.

CONSTANTINE ALEXANDER: But, of course, the zoning requires both mailing of notice and the posting of the sign. There's two legs to that chair. And no one is arguing that notices weren't mailed to the proper parties, but it's the question is whether the signage requirements were met.

BRENDAN SULLIVAN: Well, that the public has been made aware.

CONSTANTINE ALEXANDER: Well, that is to me, as I said before, is that sways me. Is that there should be no question, that the purpose -- I go to the purpose of the signage requirement, and that's to put the public, particularly the public who pass by the property, on notice that there is a case going

before the Board and what the case very briefly about. And that purpose I think is already satisfied by the notoriety, no better word, the notoriety of this property. And the fact that there's been a public hearing before the Planning Board, that there's a hearing tonight. We have even a person who claims someone just testified that they saw the sign before the hearing. She's here tonight. There's no requirement that you have to be able to see it and have seen it on the 14th day before the hearing. That's why you have 14 days. Sometimes you walk by the property and sometimes you don't. And if you do it within the 14 days of the hearing, the idea is that you'll see the sign and that will advise you that there's going to be a hearing and what the hearing is about.

In any event, I want to address the issue of the amount of street frontage. You have a plot plan. What is the amount of

street frontage?

ATTORNEY ANDREW BRAM: First of all, remember the -- in terms of what this Board is maybe about to do, I don't believe that there's another case that's been before the Board where someone has put a plan in that shows that requirement that the location of the sign be put on the site plan. I'd be happy to review with Sean many cases going back to see whether anyone has ever done this or not. So, whether this is going to be enforced or not here is an issue for me. We put the placards I prepared by the Building Department and given to the petitioners. I was given one placard to put up and that's what I did.

The frontage on Mass. Ave, and again I don't know if this is the frontage or not. This is the bike path. There is no frontage on Mass. Ave. because the building is built on a bias at this corner. This line is 169

feet roughly. The frontage is 68 feet. That is attributable to the Mass. Ave. building. The Camp Street buildings, and I agree there was no notice posted there, nor was anyone given to me by the Building Department. The frontage for the two buildings on Camp Street is 539 feet.

MALE AUDIENCE MEMBER: And Fair Oaks Street.

ATTORNEY ANDREW BRAM: Fair Oaks Street is not frontage.

MALE AUDIENCE MEMBER: Street frontage.

CONSTANTINE ALEXANDER: Wait. Brandon?

Further questions or comments from members of the Board at this point? I see none.

Sir, you want to speak on this matter? I'm going to cut-off public testimony after your comments, so go ahead. Give your name

and address, please.

KEVIN YEARWOOD: My name is Kevin Yearwood. I live at 15 Cameron Avenue. And I want to testify that I did not see a sign up there for the period of time. I did receive a notice from the Board. I was up walking to Dunkin' Donuts. I did not see the sign. I am not saying he did not put it up. All I'm saying is I don't believe it was up for the 14 days that was required.

CONSTANTINE ALEXANDER: Thank you.

Public testimony will be closed at this point.

MALE AUDIENCE MEMBER: On that issue?

CONSTANTINE ALEXANDER: Sorry, absolutely right, Mr. Brandon, on that issue. Just the issue of the adequacy of the posting of the signs.

As I said, I am of the mind -- I've heard all the arguments back and forth. I still

would say we should go forward with the case tonight. The petitioner wishes to go forward. But I can make a motion to that effect or welcome other views from members of the Board pro or con.

TAD HEUER: I'm still -- I'm troubled by the fact that I'm counting it at least more than 500 feet of frontage and there's one sign. I mean, I entirely take the point that provision about filing a plot plan with signs and their location is not something that I believe this Board, at least in my tenure, has ever required -- no one's ever contested.

ATTORNEY ANDREW BRAM: Any one tenure sitting here tonight?

TAD HEUER: I won't speak for people who's tenure is beyond mine, but particularly where there's a large building and particularly where the building is being advertised as two addresses, so the 2419

Mass. Ave. and the 1-29 Camp Street, I do not think it unreasonable, particularly in combination with a 500-foot frontage requirement, that with two structures and a 500 feet frontage permit that two signs be posted, one per building. It strikes me as somewhat reasonable quite frankly.

THOMAS SCOTT: But he was given only one sign to post.

TAD HEUER: I'm not sure that --

CONSTANTINE ALEXANDER: I think it's a matter of law that doesn't protect the petitioner. In other words, there's no -- there's no what we call estoppel as lawyers. And the fact that the city didn't give the proper number of signs. It's the obligation of the petitioner to say I need another sign. We can't give relief, I don't think, because the city didn't give him the sign.

Doug?

DOUGLAS MYERS: I would just, my impression from what I've heard, the notice was posted 14 days before the hearing. That any action of this Board, whether or not this provision has been enforced in the past, is really not relevant to our decision tonight. As far as issued the number of signs given by the ISD, I also think that if the petitioner is responsible for reading the ordinance and getting the requisite number of signs to comply with it. And I don't think the petitioner can rely on the fact that he or she was only given one sign. I think the 500 feet frontage requirement -- I don't feel it's directly in point in this case. Its application does not seem direct to me such that the presence of one sign is a violation. So based on everything I've said, I'm inclined not to require additional notice of this case.

CONSTANTINE ALEXANDER: Ready for a

motion? I take that silence to be --

The Chair moves --

BRENDAN SULLIVAN: I think Tad had a very legitimate point. Two buildings and two signs probably would have been appropriate.

CONSTANTINE ALEXANDER: I don't know the question -- if I may respond. I don't think it's a question whether it's appropriate. I think the question, you know we have --

BRENDAN SULLIVAN: And there's appropriate. The word appropriate now tilt toward the word necessary?

CONSTANTINE ALEXANDER: That's what I'm getting to. That's exactly the point. There are other parts or requirements of our 1042 that no one has ever complied with the location of the site plan for example. And here I come back to the fact that as myself, I don't know what would be gained by delaying

this case for another whatever, two weeks, four weeks. Or probably four weeks, just to put up a sign to put notice of a hearing everybody knows about. I mean, the fact of the matter is there was actual knowledge in the community, certainly in the neighborhood. And that's why -- that's why I am -- I take a very strict literal reading of the statute would require that we not consider the case tonight. But I think the equities of the situation, just the conservation of resources and the neighbors are coming back -- would have to come back for another night for a hearing that they fully know about tonight. I would like to go forward tonight. But that's just one person's decision.

I'm going to make a motion that we proceed -- that we determine that notice was sufficiently posted, primarily because this is a case that has sufficient -- I'm going to

use the word again notoriety within the community and within the neighborhood.

That there was in fact actual notice given to everyone concerned.

That the notice was properly mailed to all appropriate parties.

That there is notice on the front door of the building, though it may not be two notices of the length of the building. And this is an unusually shaped building and unusually situated building on the lot in terms of its front door.

For all of those reasons and all for the reasons, economy and moving forward on an efficient basis for this Board and for the neighborhood, I would move that we proceed with the case tonight. Petitioner having been advised of the risks going forward with the case tonight with regard to this question of notice. So I would move that we keep going forward with the case tonight. I think this

motion just requires a simple majority.

So all those if favor of going forward with the case tonight on the basis of proper notice, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: One, two, three. Three in favor.

(Alexander, Scott, Myers.)

CONSTANTINE ALEXANDER: All those opposed?

(Show of hands.)

CONSTANTINE ALEXANDER: Two opposed.

(Sullivan, Heuer.)

CONSTANTINE ALEXANDER: We go forward with the case tonight.

We have letters in the file, an e-mail, a letter from the North Cambridge Stabilization Commission. I'm not going to read them. I'm going to summarize them. Another is e-mail from other interested

parties. It's actually a party from a William Phares, P-h-a-r-e-s. And both of these parties request that we continue the case on the basis that there are ongoing discussions, negotiations, whatever with the either the current property owner or the prospective property owner. And these parties would like sufficient additional time to continue these negotiations. The Chair would observe that a request for a continuance can only be made by the petitioner and not by affected parties.

Do you wish to continue the case to continue negotiations?

ATTORNEY ANDREW BRAM: No, I believe that the one of the principals of the purchaser of the Mass. Ave. building is here and can certainly address the Board. But I believe that those discussions are ongoing and will be ongoing. And a continuance is not going to stop -- I mean, either going

forward this evening or continue this case is not going to stop those discussions. So that we are here simply to in effect draw a line on the plan. That's all we're asking for. And so whatever the abutters on this side, in this building want to discuss with the purchaser, they're free to do that.

CONSTANTINE ALEXANDER: The short answer is you don't want to continue the case to further discussions?

ATTORNEY ANDREW BRAM: Yes.

CONSTANTINE ALEXANDER: Okay. On that basis and since it's your privilege and not anyone else's privilege to continue the case to go forward. So, now we're ready to hear the case on the merits.

ATTORNEY ANDREW BRAM: The case can be summarized very simply. This building on Mass. Ave. and these buildings on Camp Street historically years ago were in separate ownership. They came with a common

ownership I believe in 1970s when Rounder Records purchased these properties. When Mr. Cohen purchased them, we came here to -- they always been used commercially during at least the last 40 years. They were used commercially actually before that. They've never been used residentially. But they were used separately commercially and then used together commercially. When we came here the first time three or four years ago, it was to reestablish the commercial use. In particular for these buildings in a Residence B District. This is a Business A district and this was always a permitted use of this building. The original plan was to develop them commercially, continue to rent these buildings out also commercially. The plan that was presented to the Board at that time required parking from the, what we refer to as the Camp Street lots that satisfy in general the parking requirements for the

proposed combined use of these properties. As it was, we were short I believe four spaces, and the Board gave us as part of the relief we were looking for, a variance on those four spaces.

Since that time Mr. Cohen has been unsuccessful in trying to develop this property. The Board may be aware that we came here with a proposed entertainment use of this building a little over a year ago. That was denied by the Board. Mr. Cohen has diligently pursued other avenues, but has been unsuccessful in developing the property as a commercial use. He was approached by purchasers who proposed to do turn this building -- actually demolish this building and turn it into housing. The housing they seek to build would be essentially conforming housing requiring Special Permit for multi-family housing from the Planning Board which they got. It was at the Planning

Board's suggestion which we highly endorsed that the petitioner seek this variance to reestablish this one line on the plan to separate these properties so that the commercial use of these properties will not be tied up with the residential condominium. Otherwise they would be, you know, they would complicate things both in a management and I think in a financial management have these properties which would be separately owned by Mr. Cohen, while these properties will be owned by multiple owners. So it makes sense to separate them, let these people be the so-called masters of their domain and we will continue to operate these properties.

CONSTANTINE ALEXANDER: And let me interrupt you.

So as a result if we were to grant that relief, the lot that states Massachusetts Avenue, if you will, that would be entirely in the commercial district?

ATTORNEY ANDREW BRAM: Yes.

CONSTANTINE ALEXANDER: And the lot Camp Street would be entirely in the residential district?

ATTORNEY ANDREW BRAM: Correct.

CONSTANTINE ALEXANDER: Each of those lots would be subject to the use restrictions and other dimensional restrictions of the respective districts they're in?

ATTORNEY ANDREW BRAM: Correct.

CONSTANTINE ALEXANDER: We would avoid or rationalizing the ownership of that lot, putting it in its proper district. You've got a dilemma, one building that sits in two different zoning districts which complicates in large in terms of developing that property.

ATTORNEY ANDREW BRAM: Right.

And, again, part of the relief we've asked for tonight is part of the separation

is to continue the commercial use that we were granted by this Board three years ago for these two properties in a residential zone. Because the development of this property will have its own parking that will meet the requirements of the ordinance, no part of the Camp Street lots is required. And we now have -- will have actually more spaces that would be required for the square footage of office and research space that presently occupies these buildings. So, it makes sense, again, we're here for a variance and. We all know the variance standard requires a hardship, and the hardship says financial or otherwise. And we're asking that the otherwise be applied here. That it would make sense to separate these uses. That it would be a hardship to have these people, multiple owners in this building and a single owner in this building that would have to jointly manage these properties. And for

that reason we're asking that this be separated. This was also, as I said, part of the recommendations of the Planning Board in granting the Special Permit to develop this property. The other standards for a variance we think are reasonably met in terms of no detriment to the neighborhood because there's really no change. The change is all going to occur here. No change with respect to the existing use of the two Camp Street properties.

TAD HEUER: That could be a detriment, right? Since nothing is being changed on the inside doesn't mean the substantial change is not in the detriment?

ATTORNEY ANDREW BRAM: For our purposes it is not. In other words, that's not, so to speak, before the Board here because they've already gotten the Special Permit from the Planning Board to do this development. And in fact, again, if -- and

I think this has been explained to the neighbors. If the relief weren't allowed, this project would still go forward. This could be done as a mixed use condominium on a combined lot. And the Planning Board was aware of that. We're asking for a common sense approach which says separate these properties and not have to go through that, you know, gyrations of creating mixed use condominium. But either way this property which has now been permitted through the Special Permit is going to be built. And we're asking this Board, which has the variance granting authority, to grant the subdivision to make this a much more workable situation for all the parties concerned.

CONSTANTINE ALEXANDER: I must say you took me back a little bit. If you can proceed -- with a mixed use development of that property without relief from us, where's your hardship?

ATTORNEY ANDREW BRAM: I think the hardship again, the hardship it says to the petitioner. And the hardship to the petitioner is having to operate this building in conjunction with this building. And so, even though, even though the petitioner might be able to do that, if it is a better result to separate the buildings, we think we are entitled to the relief.

TAD HEUER: Is better the same as difficult? I mean, we have petitioners in here that say it would be better to have a taller garage? Probably would have been. Is it a hardship? We said no.

ATTORNEY ANDREW BRAM: Yeah, I think I appreciate that but I think that, I don't know what else I could say. I mean, this Board is an experienced Board. You understand what would be involved in having a -- I believe it's going to be maybe some 30 units in this building.

CONSTANTINE ALEXANDER: 38 if you went to the Planning Board proposal.

ATTORNEY ANDREW BRAM: I was not involved in that. But however many it is, we have people involved with this commercial use here is a bit unruly. And, yes, I think it's a hardship to have to deal with that versus not deal with it.

BRENDAN SULLIVAN: But, Andy, and, again, this is just a hypothetical question. Separate the residential as condo development A. And that the commercial be condo development B. That Mr. Cohen owns the B section as a separate deeded, as you would a condo, and that the residential be totally separate. So that the residential doesn't have input into the --

ATTORNEY ANDREW BRAM: That's the problem. Because the in the condominium formed ownership this is then considered to be built on a common piece of land. So then

these people would have some rights in determining what goes on here and what the financial responsibility is of maintaining this property.

BRENDAN SULLIVAN: All because it has to be a condo association?

ATTORNEY ANDREW BRAM: Yes. And that's what we're trying to avoid to separate this out.

BRENDAN SULLIVAN: Even though there is no way to have total control of it.

ATTORNEY ANDREW BRAM LEFT: Yes.

BRENDAN SULLIVAN: You're not -- okay.

CONSTANTINE ALEXANDER: Other questions from members of the Board?

Before we open it to public testimony, I'm going to read into the record the letters received from the Planning Board dated October 26th. It says: "The Planning Board recently granted a project review Special

Permit for 37 units of housing and 38 parking spaces at this site. A copy of the Special Permit attached. At that time the Planning Board encouraged the applicant to seek the variance to subdivide the site into two separate lots; one containing the residential development wholly within the Business A District, and the other to be the commercial development in the Resident B District. The Planning Board acknowledges that the subdivision would result in the increase in the gross floor area allowed for the residential portion of the site because the existing commercial buildings on Camp Street exceed in FAR that which would be permitted on the subdivided commercial lot and currently "borrow," some of their needed FAR from the portion of the lot in the Business A2 District. Nevertheless, the subdivision would allow the residential condominium development to pursue its own

association forward without having to mesh with the interest of the commercial property. That separation of interest would be less likely to result in conflict with the adjacent office uses in the years to come. The Planning Board supports this variance to facilitate the project as it was presented during the Special Permit process. If the Board of Zoning grants the variance such that the residential development would have additional gross floor area available to it, any variation from those plans approved by the Planning Board to make use of the extra GFA would require Planning Board approval."

I think that's the point that's worth underscoring as I understand it. Point being that if we were to -- you got a Special Permit from the Planning Board to develop the property, I'm going to call it property on Massachusetts Avenue, the one you want to put in entirely in the commercial district to put

38 residential units. And they gave you that. You shake your head yes or no?

GREGORY COHEN: 37.

CONSTANTINE ALEXANDER: 37.

That's right. 38 parking spaces. But subject to getting relief from us to subdivide the property. You can't do that zoning-wise unless we allow you to subdivide the property. If we don't -- if we don't -- if we turn you down tonight, I don't think your Special Permit from the Planning Board would work.

GREGORY COHEN: I think what the Planning Board meant if you grant the subdivision variance, thus allowing us to be divorced from each other, and there's extra FAR that could be gained on the Mass. Ave. site, then we would need to go back to the Planning Board to review the use of that FAR.

CONSTANTINE ALEXANDER: Okay.

GREGORY COHEN: But if we decided to

stick with the plan as it was presented, we would not. The developers --

CONSTANTINE ALEXANDER: You would have one building, one lot --

GREGORY COHEN: No.

ATTORNEY ANDREW BRAM EFT: What he's saying I believe, Mr. Alexander, if this subdivision is allowed given the size of this lot, they could develop this to an additional sum amount of square footage.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY ANDREW BRAM: So they could produce 37 bigger units or maybe they could do 40 units.

CONSTANTINE ALEXANDER: Right.

ATTORNEY ANDREW BRAM: What that decision is saying if they do anything other than -- if this is granted and they want to -- the purchasers want to develop this in a manner different from the plans that's on the Planning Board, they have to go back to

the Planning Board.

CONSTANTINE ALEXANDER: The point is -- but if we were to deny the relief tonight that you're seeking --

ATTORNEY ANDREW BRAM: Right.

CONSTANTINE ALEXANDER: -- you cannot go forward with the project.

ATTORNEY ANDREW BRAM: I believe they can go forward. In fact --

SEAN O'GRADY: My belief is they can.

CONSTANTINE ALEXANDER: Okay. Let me try to approach it a different way. If we were -- if there's a project, a plan to develop 37 units on this, in this structure --

ATTORNEY ANDREW BRAM: Mass. Ave. building, yes.

CONSTANTINE ALEXANDER: That would go forward regardless if the builder wants to do it, regardless of what happens tonight.

ATTORNEY ANDREW BRAM: Correct.

CONSTANTINE ALEXANDER: So, and if we give relief tonight, and whoever owns the property wants to modify the plans, they have to go back before the Planning Board to get another Special Permit.

ATTORNEY ANDREW BRAM: Yes.

CONSTANTINE ALEXANDER: The point that I'm just trying to draw out for the benefit of the neighbors is that there's not a matter of giving you a free pass if we were to grant you relief tonight. You have a pass from the Planning Board to build 37 units. But if we were to grant relief, it's not -- we're going to open up a situation as a matter of right build 40 units. There is a check and balance here that I'm trying to bring out.

ATTORNEY ANDREW BRAM: Yes.

TAD HEUER: And you're only granted at 1.75, correct?

CONSTANTINE ALEXANDER: FAR?

TAD HEUER: FAR.

ATTORNEY ANDREW BRAM: I believe that's so.

TAD HEUER: If you wanted to increase the number of units and increase their size, you would have to come back before us because you are indeed in excess of the FAR.

GREGORY COHEN: I don't believe the building is actually --

ATTORNEY ANDREW BRAM: But it's because it's a multi-family Special Permit to be granted by the Planning Board, that petitioner or the purchaser would have to go before the Planning Board not before the BZA.

TAD HEUER: Correct. If they had any excess over the FAR that were granted according to them that they wanted to change the amount of FAR on the site beyond the 1.75 that's been granted, they would need to go

back.

ATTORNEY ANDREW BRAM: Planning Board.

TAD HEUER: Yes. This is the upper limit of what was allowed on that cite before you go.

ATTORNEY ANDREW BRAM: Yes.

TAD HEUER: You have to go before us or the Planning Board to do anything beyond what was granted by the Planning Board already?

ATTORNEY ANDREW BRAM: Correct.

CONSTANTINE ALEXANDER: Thank you, Tad.

The Chair would just note that the only other correspondence that appears to be in the file is that correspondence I referred to earlier requesting a continue -- request about a certain neighbors or abutters' request or neighborhood association requesting a continuance of this case, and

we've already dealt with that.

With that I'm going to open it up to public testimony. Is there anyone who wishes to be heard on this matter?

Sir. Again, you have to come forward and give your name and address for the record.

RON JACKSON: Its Ron Jackson, 18 Camp Street which is right across from the two Camp Street office buildings that Mr. Cohen has refurbished and built and occupied. I just wanted to say that I'm for the subdivision because I think it will make things a lot easier. From what I understand from reading all the testimonies and all the Planning Boards from the last meeting, and I also, you know, want to say that, you know, with what I've seen Greg do on the Camp Street properties has been -- looks really great. The landscaping and everything and the buildings look great. And we're really happy with what its turned into at that point.

And as far as the other building, I just want so see that turn into something nice too, because right now from where my vantage point is is a pretty ugly warehouse building. So I'm looking forward to see that thing turn into some nice housing. And I think that's a good thing for the neighborhood in general.

CONSTANTINE ALEXANDER: Thank you.

Anyone else wishing to be heard?

NINA SCHWARZSCHILD: I'm Nina Schwarzschild. And I live at 28 --

CONSTANTINE ALEXANDER: Spell your last name for the stenographer.

NINA SCHWARZSCHILD: Nina Schwarzschild, S-c-h-w-a-r-z-s-c-h-l-i-l-d at 28 Camp Street. And I want to speak in favor of the subdivision because it seems that it would simplify the proposed redevelopment. I did want to make two comments.

One is that I would ask the Board to

condition their approval on limitation that the build out would not exceed the number of units that have been proposed to date. And I think that (inaudible) that is proposing to redevelop the residential portion of the site is prepared to state that he is prepared to receive a condition from the Zoning Board to limit --

CONSTANTINE ALEXANDER: We don't need to put that condition, because if they did want to do that, they would have to get approval for the Planning Board.

NINA SCHWARZSCHILD: My request is I'm not supporting a subdivision approval subject to the Planning Board making any decision that they should choose. I'm -- my statement is that I am in support of a subdivision with a condition that Mr. Ognibene has said that he's prepared to accept. And I hope that he'll speak on this topic to limit his build out to the 37 units

that he's already indicated is his --

CONSTANTINE ALEXANDER: My only concern, and it's a personal one, maybe other members of the Board won't accept it, but you're asking us to propose a condition that would take away jurisdiction from the Planning Board, and I don't think we should do. I'm not sure we can even do that.

NINA SCHWARZSCHILD: I ask that you not make a decision to subdivide land which currently has a certain limitation about the total amount of build out. That the subdivision should not inadvertently lead to some increase in build out. And that you should -- that you should make that limitation upfront. That the intent of the subdivision as has been presented, is not to increase the build out.

CONSTANTINE ALEXANDER: I understand. I don't want to prolong this. But, again, the point is that they've

got -- there is jurisdiction in the Planning Board to allow the number of units. They've gone before the Planning Board. It's the 37 units you have a referred to. They always can go back to the Planning Board -- they have to go back to the Planning Board if they want to go to 40 units as Mr. Heuer pointed out. It's not a matter -- there will be a Board that will look over this, whatever petition is filed. That Board will make a determination. I don't think we can say here -- we should say here that we're not going to allow the Board to consider that. You'll have an opportunity, hypothetical hopefully, Planning Board hearing to express your views that it shouldn't go from 37 units to 42 units, whatever it will be. I'm a little reluctant to say as a member of this Board, that we're not going to allow the Planning Board to do what the Zoning Board doesn't have a right to do.

TAD HEUER: Do we have the authority to restrict the FAR which is rather more determinant to restrict the FAR of this parcel to a number that we feel is in jurisdiction?

THOMAS SCOTT: Why would we? The FAR is -- if they exceed it, they have to come back before the Board anyway.

TAD HEUER: Before the Planning Board, not before us.

CONSTANTINE ALEXANDER: I think your question is whether the Planning Board has a right to give a variance if you will?

TAD HEUER: Yes.

CONSTANTINE ALEXANDER: I don't know the answer to that. Sean might know but he's not here right now. He stepped out.

TAD HEUER: I'd like to know the answer.

BRENDAN SULLIVAN: They have a right to grant the Special Permit or the plan that

was submitted, the plan that they approved. Any variation in increase on that plan requires going back before the Board.

CONSTANTINE ALEXANDER: The Planning Board?

BRENDAN SULLIVAN: The Planning Board. So another level of review, should they exceed that, maybe what I sense here is that there's a little distrust on the Planning Board than it is of the Zoning Board only because I think our criteria is a little bit more difficult.

CONSTANTINE ALEXANDER: I think you're exactly right, Brendan. Distrust or not I think is the right word.

BRENDAN SULLIVAN: How many belts or suspenders to this?

CONSTANTINE ALEXANDER: Well, more than belts or suspenders. I'm saying the suggestion is that we don't even allow the Planning Board to take a look at it. That we

condition it that if they want to do anything more than 37 units, they got to come back before us to get relief from that as well as go to the Planning Board. I'm a little troubled by that.

BRENDAN SULLIVAN: Well, I think the -- yes, I think the implication may be that if they were to exceed that, if they went back to the Planning Board, the Planning Board allowed it and it just showed two or three units. But there's another level that no, now you're in violation of zoning.

CONSTANTINE ALEXANDER: Then they have to come back.

BRENDAN SULLIVAN: I think that's what they're asking for.

ATTORNEY ANDREW BRAM: I want to add one more thing maybe to answer the question. There's no suggestion that the Planning Board can grant a variance. The proposal that was made to the Planning Board, as I understand

it, was for totally conforming development. And even the 175 that Mr. Heuer referred to.

TAD HEUER: That's your by right number, correct?

ATTORNEY ANDREW BRAM: Yes.

TAD HEUER: Yes.

ATTORNEY ANDREW BRAM: That's not going to change. And the suggestion that this Board impose a condition to limit it to 175, is just parroting back what the ordinance says is permitted on the site. So I don't, I think the point has been made if there's any change to the plan, the Planning Board has been very direct in saying if you're going to change this plan, you need to come back and have another hearing.

BRENDAN SULLIVAN: Jurisdiction. The Planning Board has jurisdiction over this.

CONSTANTINE ALEXANDER: Yes, they do. And I think that's where it has to

reside. That's the way their statute is written.

BRENDAN SULLIVAN: We would have to do something separate.

TAD HEUER: They have jurisdiction over number of units. We have jurisdiction over floor area ratio.

BRENDAN SULLIVAN: They have a plan they approved. Whatever that plan is and number of units, FAR, scope, whatever that plan is, that's what they have jurisdiction over. Any alteration of that plan has to go back to them.

DOUGLAS MYERS: My question is simply repeating what Tad said in a different way, but if it's possible the future change to the development would not increase the number of units but would change the FAR, I guess the practical check point into whether or not that proposed change would come back to us is whether a permit would issue without

our approval.

CONSTANTINE ALEXANDER: I don't think that could happen. The Planning Board can -- the Planning Board, their decision granted approval for the 37 units, and all the dimensional requirements are listed right in here. So if they change the FAR, you still 37 units. If they're going to change the FAR, they're not in compliance with the Planning Board. And to the extent that the change in FAR or a hypothetical change in FAR does not comply with the Zoning By-Law, they would have to come back before us as well. But if they don't have to come back before us, because they're fit within -- they only have to go back before the Planning Board, I don't want to put us in a position you got to come to us anyway. I think we have to take the statute as it's written, the city, the City Council made a determination this is how we want to deal with this and I think we should

leave it as it is.

BRENDAN SULLIVAN: There are parameters that are drawn by the Special Permit by the Planning Board. They have to stay within that box.

CONSTANTINE ALEXANDER: Exactly. Including FAR.

I'm sorry, you wanted to speak, sir.

NINA SCHWARZSCHILD: I didn't finish my comments.

CONSTANTINE ALEXANDER: I apologize.

NINA SCHWARZSCHILD: And my second comment has to do with the parking and some other aspects of the parking lot that would be retained by Codacam in the lot in between 1 and 29 Camp Street. It's been suggested that this, by the subdivision would result in a reduction in parking spaces in that parking lot, and I would request that there be no reduction in parking. The subdivision and

the subsequent redevelopment of the Mass. Ave. site is going to produce additional parking needs and reduce the existing parking that was developed as a result of a variance that you granted previously does not seem needed or beneficial, and I request that you condition a subdivision approval on obtaining the parking and also on some clarification, at the very least, of what the plans are for trash and other uses because it's been discussed that there -- by subdividing the parcel, the proposed trash location is essentially lost because it was going to be on the Mass. Ave. parcel. And I don't think there's been a conclusion as to the location of the trash that would be needed for this.

CONSTANTINE ALEXANDER: I'm sorry, I'm not sure -- I want to make sure I fully understand your point on the parking.

We granted a variance two cases ago to

reduce the amount of parking on the Camp Street side, the then proposed redevelopment of the property. And the variance allowed four or less parking spaces than the zoning law requires. Are you asking that we reverse that and say --

NINA SCHWARZSCHILD: No. I'm asking that the current amount of parking which I believe complies with the zoning variance that you granted, be retained. I have -- it's my understanding that from Codacam statements that the parking is going to be reduced.

CONSTANTINE ALEXANDER: It can't be without going back before our Board.

NINA SCHWARZSCHILD: I'll defer to Greg Cohen on this, but that's my understanding.

GREGORY COHEN: Cambridge PTDM has informed me that this was intended to be retailer offices, and our parking -- that we

asked for a variance on, we needed relief on that. So by taking that away and adding that parking, we therefore have more parking than required for the square footage building that they were left with. And when they do a count of shared rides and single drivers, they have a -- they don't want you to have too much parking. So I've tried to come up with a plan with them in the discussion to -- although I would still be able to use the space, decrease the actual number of spaces by --

ATTORNEY ANDREW BRAM: Oh, no, it's simple.

GREGORY COHEN: Not really eliminate bike parking.

ATTORNEY ANDREW BRAM: If you look at Article 6, there's a formula. It says minimum and maximum.

CONSTANTINE ALEXANDER: Right.

ATTORNEY ANDREW BRAM: Right now these two buildings have I believe 42 spaces.

For the current amount of use that they have, they only need about 30. They exceed --

CONSTANTINE ALEXANDER: The max.

ATTORNEY ANDREW BRAM: The max.

There's no plan to change these buildings or to take this parking away. It's just -- and I think this addresses the neighbor's point. The dumpster location is going to change. There would be a dumpster over here now, where before it was going to be over here. There may be parking spaces left to the dumpster, but there's no plan to change the parking lot. The parking lot is what it is. If spaces get to be larger or something else in order to make the count work for city traffic and parking, then that's what will happen to bring the parking order lot in conformity with the zoning ordinance.

CONSTANTINE ALEXANDER: And if you don't, if you left the parking as exactly what it is right now, you're going to be over the

max and therefore you need a variance -- you're looking to reduce it so you don't need a variance. So you by reducing it complying as a matter of right to that site.

ATTORNEY ANDREW BRAM: That's right. And no physical change to (inaudible) it's going to be what it is.

TAD HEUER: Further, you would within your rights to not leave it. If you want to put a dumpster in or to put grass on two spots --

GREGORY COHEN: Bike racks.

TAD HEUER: You still would have that place to play with because you would be well under.

DOUGLAS MYERS: And the dumpster would be serving the property on Camp Street.

ATTORNEY ANDREW BRAM: Yes.

DOUGLAS MYERS: Exclusively.

ATTORNEY ANDREW BRAM: The both buildings on Camp Street. Both buildings.

CONSTANTINE ALEXANDER: Are you finished?

NINA SCHWARZSCHILD: Yes, thank you.

CONSTANTINE ALEXANDER: Sir, you want to speak?

PAUL OGNIBENE: I'm Paul Ognibene, O-g-n-i-b-e-n-e. It's a tough name. So I'm the potential purchaser of the property, and I just wanted to put some context around the debate regarding units. Although it sounds like jurisdictional questions and perhaps it's not appropriate for this Board to consider, just to provide some peace of mind to the neighbors and to go on record, I did want to say that we have negotiated over the last week with the various abutters in exchange for their support. We have said that any plans that we bring forward to the Planning Board, would be restricted to the original approved unit count, 37 units. We

wouldn't increase it to 40 even though maybe we could formulate.

And secondly, that we would be staying within the 1.75 times FAR. But the result in GFA if it increases because of the subdivision, we would like to take advantage of that space. And we would either do so internal to the building or perhaps bumping out the building again with the Planning Board's oversight and ultimate approval. So for whatever it's worth, to let the neighbors know it would be our intention if you were to grant the subdivision variance, we would go back to the Planning Board with a new proposal to utilize that 3,000 square feet in some way, perhaps altering the structure itself, but leave it the way it is.

CONSTANTINE ALEXANDER: Thank you. Anyone else wishing to be heard?

ROBIN YEARWOOD: Robin Yearwood, 29 Cameron Ave . I don't know if this is within

your jurisdiction, but I have concern about parking. And in that area, especially on Fair Oaks Street, parking is business zoned and not all residential. And if he's going to give up spaces to a dumpster and we're going to have more resident parking, I don't think that where this is a residential building now or going to be, that we should have a business zoned parking area. So I don't know if the city or this Board does anything with that, but I think we should look in the area at what is business zoned and what is resident parking and change that to be resident parking rather than business.

ATTORNEY ANDREW BRAM: My comment on that, that's a point that there is business parking along the back of the building. And since -- and it is business parking because it's no longer going to be business use, I'm sure if that particular neighbor took that concern to Traffic and Parking, this would be

assigned differently because it's a legitimate argument that this is no longer commercial use. Nothing is going to change here. Our tenants park here. We have excess capacity at this -- in our lots. So nothing we're going to do is going to interfere with any residential parking or the demand in this area. This can be turned into permit parking.

TAD HEUER: And you're planning to put parking for the new development on the lot, right?

ATTORNEY ANDREW BRAM: Yes.

CONSTANTINE ALEXANDER: Anyone else wishing to offer any comments?

(No response.)

CONSTANTINE ALEXANDER: The Chair notes --

MICHAEL BRANDON: Wait a second, Mr. Chair.

CONSTANTINE ALEXANDER: Oh, I'm

sorry, Mr. Brandon. Go ahead.

MICHAEL BRANDON: Again, I'm Michael Brandon. 27 Seven Pines Avenue. And given that Mr. Cohen has taken the position that he no longer wants to negotiate about this proposed subdivision or what he's going to do with the lot, I would urge you to deny the subdivision of the lot. I believe only one of the current members, Mr. Sullivan, was here when the 1977 variance was issued, but I would ask that the Board go back and carefully read that decision, and you will see what the plans for this full property -- and this is not subdivided were discussed with a broad group of neighbors at length. And we jointly came to you with Mr. Bram represented his client, I and others representing the stabilization committee that a neighborhood consensus was reached over how these properties would be developed. Part of the reason that that happened, and

I'll pass around, and this will be in the records for that previous contrary variance. But what the agreement was, people were first alarmed that all these properties, Rounder properties had been sold to a developer. And this was a time when we were seeing up and down Mass. Ave. buildings being demolished in some cases -- I don't know if they were demos, but large apartment buildings with no ground floor retail being built. And these four or five different properties, several hundred units added which has increasingly created overflow, parking congestion on the side streets. We were relieved when Mr. Cohen contacted us and wanted to meet with us, that his proposal was specifically to rehabilitate the buildings on Camp Street. One story building here, two story building here. Enlarge the parking lot by removing some annexes here. Use those as offices. That this existing warehouse and its

extension would be kept as is. It would not be demolished. And he would redevelop it as offices on a Mezzanine level and ground floor retail space along the frontage along Linear Park. That would look -- these were the representations he gave. Low scale building, retail that the neighbors really appreciated. More housing with dead street frontage. There was much discussion about the design of the parking lot, landscaping, setbacks, upkeep of the property and so forth. The Board at that time in '77 decided as part of its variance to incorporate most of the terms of that agreement. There were a few that were excluded because Sean thought --

CONSTANTINE ALEXANDER: Sean wasn't here in 1977.

ATTORNEY ANDREW BRAM: He's talking about 2007, he's referring to me.

MICHAEL BRANDON: Two years ago.

Right, I'm sorry. All those -- I was here in '77.

CONSTANTINE ALEXANDER: I have no doubt.

MICHAEL BRANDON: I think Mr. Sullivan may have been too.

BRENDAN SULLIVAN: Some things may never go away.

MICHAEL BRANDON: As much as we may want to.

So in any event, so there are a series of conditions. And Sean suggested to the Board that some of them might be hard for them to -- for Inspectional Services to enforce. Although in fact they're based on city ordinances, so those were removed. But for the most part, the agreement which was attached, although it wasn't recorded with the variance decision, it's part of the decision by reference. And it included various conditions that haven't been

complied with in terms of completion of the parking lot, addition of awnings, some screening issues with fences and so forth. And we have not complained about that, you know. We've been trying -- those of us who are involved in those negotiations, and there were compromises made by I think all of the people who have spoken tonight to come up with a plan. And now what has happened is basically what I would call is a bait and switch where the developer's plans have changed. He hasn't complied with what he agreed to do in the first place, and now he's seeking not what would be a hardship but what would be a win fall to basically go back on the agreement to just use this building as is, recycle it, and instead he wants to sell it off to another developer supposedly, although we don't know what interests he might have -- the current owners might have in that, and to max it out with housing

without final resolution with the abutters who are most immediately affected which are a seven unit, three-story condo building that would be immediately next-door, shares a party wall with the building that would be demolished and then be rebuilt against that wall and go up four stories. That's the group Mr. Ferry's referred to who is in negotiations and he is -- and at least three of his fellow condo co-owners wrote you asking for a continuance to allow that to go on.

CONSTANTINE ALEXANDER: We've been there before. And please address -- there's been no enforcement order as to whether the prior variance was not being complied with. And so that's not before us tonight. Before us tonight is the subdivision plan.

MICHAEL BRANDON: Right.

CONSTANTINE ALEXANDER: And we're going to assume that there's been compliance.

By the way I was on that case too. So I know very well what -- I believe I have.

ATTORNEY ANDREW BRAM: You chaired that case.

MICHAEL BRANDON: Yes, you were. I apologize.

CONSTANTINE ALEXANDER: The fact of the matter that's before us, is the fact that variance was granted, the conditions have been complied with because there is no evidence that the ISD believes that they weren't complied with. So there's no --

MR. BRANDON: But I --

CONSTANTINE ALEXANDER: I'm not going to go back to that issue tonight and debate whether there was a compliance of conditions for a variance that was granted years ago. Let's address the matter tonight.

MICHAEL BRANDON: Okay. As there being no evidence, I am testifying that there

is noncompliance. I would agree that we as a means of cooperating have not enforced those, you know, to try to get along. But the statement has been made by Mr. Bram, and it was indicated in the application that oh, all this -- and it's been portrayed in the descriptions that were inadequately posted, that this was merely gonna be a subdivision to allow a change in ownership. And it wouldn't affect the Camp Street properties. In fact, as the discussion has ensued, it will. It will also affect the -- should you grant it, the Mass. Ave. property by allowing additional FAR. That discussion at the Board, in fact, the Board -- Mr. Russell, Hugh Russell who used to be on this Board thought that this Board would immediately on its own do what Ms. Schwarzschild suggested and say, you know, if we grant this, we are not going to provide you additional FAR that supposedly as of right, because it's not

really as of right, because this is a single lot. And until the subdivision is granted, they're not allowed to have anything. That additional square footage is just adding insult to injury from those with my perspective.

The statements that the Special Permit, you know, it's the Special Permit that they have a free pass here because, you know, they can already do what they want by Special Permit is also not true because that permit has been -- the written decision has been issued, but the 20-day appeal period has not lapsed. So, we don't know what will happen.

CONSTANTINE ALEXANDER: Thank you. Mr. Brandon, you all set?

MICHAEL BRANDON: Oh, and then the main argument is that there is no hardship here as some of the members had suggested for themselves. If you read the application, even the arguments that are made for points

2 and 3, really, don't respond to the criteria. Even if there were a hardship here because, you know, two condo associations create a hardship, that has nothing to do with the required legal hardship which has to do with the soil conditions or shape of the buildings and land that distinguish this property from all the other properties in Residence B zone. Residence B and BA-2 zone. And there are many split zone properties. So there's no, there's no legal basis for granting this. It betrays what I think was a long-term good faith effort by the community to live with this.

The final point is just the suggestion that this isn't going to affect the Camp Street properties. In fact, Mr. Cohen did come to our last meeting without any new drawings, without any details, which we had when we reached our original agreement that specifically talked about issues about what

would the trash pick up be? These are two- and three-family houses that face the Camp Street lot. And I'll circulate it, I'd like it back if I could.

CONSTANTINE ALEXANDER: Why don't you just keep it. You can circulate. I don't need to see it. Anybody else wants to see it? Keep it.

MICHAEL BRANDON: I would urge the Board to look at the record of what you're changing in terms of the existing variance. Because as it's been portrayed, presumably what you would be doing is granting him permission to sell off the front part of the property, but if all of the other conditions remain, then the new owner should be either negotiating with neighbors about putting housing into the front building, you know basically.

CONSTANTINE ALEXANDER: Thank you.

MICHAEL BRANDON: He's reneged on

the original agreement that was made with the neighborhood, and on the conditions that the Board base its variance on. So thank you and I'm sorry to go on and on.

CONSTANTINE ALEXANDER: I'm going to cut-off public -- you want to speak, sir?

KEVIN YEARWOOD: Mr. Chairman, my name is Kevin Yearwood. I'm at 15 Cameron Avenue.

CONSTANTINE ALEXANDER: Yes.

KEVIN YEARWOOD: And to be honest with you, sir, I wish I knew what I could say to you that would sway you not to allow this to go.

CONSTANTINE ALEXANDER: You have to sway all five of us.

KEVIN YEARWOOD: I say you representing the Board.

CONSTANTINE ALEXANDER: Thank you.

KEVIN YEARWOOD: I went to the planning hearing. I was against it, the

proposed development. I am an abutter. I am well aware that my house is not in great shape, but I think that what is about to happen is going to be very detrimental to the community. I think the parking issues has not been adequately addressed despite what the rules and regulations might be. I think that man does have a right to develop this property as anyone would, but I think what we're doing in the city in that area is atrocious because all we're going to do is create buildings that are going to be tall buildings. I remember when the building -- when Goodyear Tire and Rubber was on Mass. Avenue where the MBTA is. I think that we're not being thoughtful enough about what's going on. And there's no buffer. And when they start the construction, I know I'm going to be impacted by the noise, the dirt and everything else and no one has come and spoken to me. Thank you.

CONSTANTINE ALEXANDER: Thank you, sir.

I will now end public testimony. And I've read into the file what correspondence we have.

Comments from members of the Board? Ready for a vote then? Doug, ready for a vote?

DOUGLAS MYERS: Well, I would -- I would appreciate members of the Board who have a basis for doing it commenting about whatever precedents, history, understandings occurred between the Board and the community back in 2007.

CONSTANTINE ALEXANDER: I'll try, and Brendan can supplement it. I don't know if I chaired that case but I was on the Board at the time. There was a proposal to create mixed use -- this is a very unusual building. In terms of its configuration, it's several buildings joined together sitting around two

streets. And there was a proposal for a mixed use development of this property. I have to say to my surprise because it's almost never seen, it was unanimous neighborhood support for it. Even Mr. Brandon expressed support for it. There were conditions -- one variance related to reduction in the amount of parking required if it continued to be one structure. Thereafter nothing happened, and I only have to assume that the economic conditions made it difficult to develop the property. And there was an attempt, of course the building could not be developed for mixed use purposes. To put in at least a portion of the building an entertainment facility. The tomb. It sounded like a mini Disneyland where you walk through the building and you see mummies and the like. And there was a lot of concern that this kind of use for the building would create parking, school buses with the kids mainly would come

in and where would they park? And it would be open to ten, eleven o'clock at night. And some of the people, some of the children would be teenagers and the like, and there would be noise in the residential neighborhood. And there was almost unanimous opposition to that. And this Board turned down the variance. They needed a Special Permit. Whatever relief they needed we could not give it because of the impact on the neighborhood. And so the property continues to be underdeveloped, and the economic conditions are no better than they were in 2007. So we're sitting here with a building, very odd and difficult building sitting on two zoning districts. And development's very difficult because of the -- just the way the buildings's configured. And so what is being proposed is an attempt to in my mind rationalize the ownership of this property putting one piece of the land in one district

and one in the other district so it's no longer split districts. Each parcel would have to comply with the zoning requirements of this district. They're not asking for any relief from that. That they're planning to do is the parcel that's on the Massachusetts Avenue side converting that into housing. And that as you've heard, they've gone to the Planning Board with a plan which would allow 37 units, not they, but the person would purchase the property from them and the Planning Board has approved that. But to make the property work from a really operational point of view, you have to separate the buildings. You should separate the building, and the Planning Board says you should separate the building to two lots and that's why they're here. But the Planning Board has put whoever is going to develop this property on notice, that we've approved this project with 37 units. If you're going to

change that, you're going to have to go back before the Planning Board. You're not getting a free ride. That's how I read the Planning Board's comments. You have to be able to as a matter of right be able to do that, you're going to have to come back before us and look at it again. As I said before, in my mind a check and balance here. There would be a Board that would review something that's gonna happen to this property beyond the 37 unit piece that was already submitted to public scrutiny and approved by the Planning Board. It's a long winded way of responding to your question. Brendan?

BRENDAN SULLIVAN: No, that's it.

CONSTANTINE ALEXANDER: Well, I mean from my characterization of the history of this, and I think some of my earlier comments, I mean you can see where I'm coming out on this. I can understand neighborhood concern about change. We're talking about

change. But I think the fears are misplaced in terms of -- there will be change, it will be change that will be scrutinized by a public board of this city, be it our board or the Planning Board or depending on what the change is going to be, both. There's not going to be a situation here where all of a sudden the amount of residential use on the property will not comply with our parking requirements or that there will be overly intense use of the property because of now there will be 50 units residential units in the building. All that they're trying to do is to make this project feasible so you can somehow develop the whole building, at least a portion of the building right now, the rest being Camp Street when someone else comes down the road. Because the zoning will be clarified. Someone will see what they have to comply with and what they don't have to comply with. And right now it's very

difficult to develop this property. That's to me that's the hardship here. It's the shape of the structure and it's location. It's a shape -- it's a structure that's very unlike any other structure in the neighborhood which is one of the requirements and Mr. Brandon points out for the zoning relief. It's a very unique structure in terms of its shape and size. And because it sits on two zoning districts, it's very difficult to use or to develop commercially. And the city's interest to have this very large piece of property developed in an appropriate way. I think residential housing on Massachusetts Avenue -- or the Planning Board believes it's a good idea. They gave it approval. They gave a Special Permit. I for one am in favor of granting the relief being sought. I've spoken enough.

Anyone else wishing to be comment or go to a vote?

TAD HEUER: I have a question of C-2. So if we're granting that it's substantially derogating. Your comment says the existing structure will not be enlarged in the building unless it will be vacant or sometime and is this a demo or not? I was under the impression it is a demo. I guess the existing structure would not be enlarged, it will be gone?

ATTORNEY ANDREW BRAM: That's it.

CONSTANTINE ALEXANDER: But will be replaced what will be gone.

BRENDAN SULLIVAN: Addition by subtraction.

TAD HEUER: Right, I think I'm in favor of it, but that's, you know, don't be disingenuous. The existing structure will not be enlarged?

ATTORNEY ANDREW BRAM: Wait a minute. At the time I wrote that I was not involved in the Planning Board hearing. I

represented Mr. Cohen not Mr. Ognibene. It was only after that was filed that it was told to me that they were going to take this building down. I thought the housing was going to be developed within the existing building that's why I wrote that. There was going to be no change in the exterior of the building.

TAD HEUER: You understand where I'm coming from?

ATTORNEY ANDREW BRAM: I do. But I mean at the time I wrote it I believed it was factual.

CONSTANTINE ALEXANDER: Ready for a vote?

MICHAEL BRANDON: Can you clarify what the existing conditions -- I mean, is this going to be a new variance or you know --

CONSTANTINE ALEXANDER: Yes. They've applied for a new variance.

MICHAEL BRANDON: To subdivide.

CONSTANTINE ALEXANDER: Subdivide. Any conditions that have been opposed continued in effect. Nothing else changes. We're going to have instead of one building it's basically subdivided into two buildings.

ATTORNEY ANDREW BRAM: Two pieces of land.

CONSTANTINE ALEXANDER: But effectively you're making two buildings. That's all. All the other conditions at any --

MICHAEL BRANDON: Can you make that clear in your --

CONSTANTINE ALEXANDER: I'd be happy to. That is a fact. Sure, I'd be happy to do that. That is the case.

MICHAEL BRANDON: There are changes that have not been negotiated with the neighborhood.

CONSTANTINE ALEXANDER: Changes to

the old variances? Well, I'm ready for a motion.

MICHAEL BRANDON: The old tradition. I'm sorry.

CONSTANTINE ALEXANDER: I understand.

The chair moves that a variance be granted to the petitioner to subdivide parcel, the parcel that sits at 2419 Mass. Ave. 1-29 Camp Street. The Board would grant that variance the based upon the following findings:

That a literal enforcement of the provisions of the ordinance would involve a substantial hardship to the petitioner. Such hardship being that unless we divide the property, unless we allow the division of the property, commercial development of this now vacant for a number of years property would be extremely difficult. Maybe to the point of -- well, it would be very difficult

creating a financial hardship to the petitioner or anyone who owned this unusual structure.

That the hardship is owing to the fact of the shape of the structure. It's a very large and also unusual in its shape, and it's certainly a structure that is very different from the other structures in the zoning district.

And that relief may be granted, would be a substantial detriment to the public good. In fact, what would happen is all we were doing is dividing property to make it more rational from a zoning point of view, to put one parcel rather than have a parcel that sits over two districts, to have one parcel in one district and one in the other. All that we would be doing to grant relief would be that. We would not alter the conditions of prior granted variances. We would continue to apply until and unless whoever

owns the property comes before us and seeks a variance for a modification of those conditions. But in terms of the -- by allowing this we are, I think we are facilitating the development of this as I say very large, very structure that is sitting vacant at this point in time.

The variance would be granted on the condition that the subdivision be in accordance with the plan submitted by the petitioner, prepared by Bryant Associates, Inc. dated September 17, 2009 and initialed by the Chair.

All those in favor of granting the variance on the basis so moved, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

(Alexander, Sullivan, Scott, Heuer, Myers.)

ATTORNEY ANDREW BRAM: Thank you

very much.

(Whereupon, a discussion was  
held off the record.)

(10:50 P.M.)

(Sitting Members: Constantine Alexander,  
Brendan Sullivan, Thomas Scott, Tad Heuer,  
Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair  
will call case No. 9860. 983 Massachusetts  
Avenue. Is there anyone here on that  
petition? Give your name and address for the  
record, please.

JAMES MURRAY: Good evening  
Mr. Chairman. Hello, Tad, and members of  
the Board. My name is James Murray. And I'm  
here this evening seeking a Special Permit to

operate a fast food service venue at 983 Mass. Ave.

CONSTANTINE ALEXANDER:  
Environmentally friendly. You even started your marketing even before --

JAMES MURRAY: Indeed that's a very integral part of our plan here.

CONSTANTINE ALEXANDER: I'm sure you'll tell us all about it.

ATTORNEY DAVID SUMMER: David Summer. I represent Millstone, LLC. I'm an attorney. My address is 77 Franklin Street in Boston. We've prepared for Mr. Murray and Mr. Siegle, who is sitting to Mr. Murray's right, Aaron Siegle. They've prepared a packet describing their concept, although they call it -- just if I can speak briefly, they call it fast food it's not a McDonald's or a Wendy's.

CONSTANTINE ALEXANDER: Let's make it clear for the record, fast food is a

defined term in our Zoning By-Law. It encompasses single-family owned structures as well as the McDonald's of the world. It's not a McDonald's project.

ATTORNEY DAVID SUMMER: Right, exactly. Mr. Murray has included in the packet a listing of the menu items. It's pretty wholesome gourmet style food. And he requires a Special Permit because of the, because it's in a B-2 district. And speaking to the zoning Res 11.3 --

JAMES MURRAY: So, gentleman, I would like to tell you quickly about our ideas. In fact, we're here as I say, seeking a Special Permit to operate -- this sort of tripped us up in our plex to open up this cafe in the neighborhood we were told this property has some issues with abandonment, because as you may know this property had a fire in it. And so --

CONSTANTINE ALEXANDER: For the

record, what you're referring to is the fact that there was a fast food establishment as defined by our Zoning By-Law there prior that suffered a fire, and it was two years since that fire occurred on the property ceased to be operating. As a result, you lost the status of the fast food enterprise. That's why you're here before us tonight.

JAMES MURRAY: Indeed.

CONSTANTINE ALEXANDER: You bought it from the people that had the pizza joint before you, you would not have to come before us.

JAMES MURRAY: Uh-huh. And to that end I wanted you to take notice of a certificate of merit that was issued by the Historical Society and also the City of Cambridge after the improvements were made to the space in conjunction with the building owners, property owners, the City of Cambridge worked to beautify the storefront

and that certificate of merit was indeed awarded to the space.

So first we should thank you to hearing our request for a Special Permit this evening. We are seeking approval to operate a neighborhood cafe at 983 Mass. Ave. We kindly ask the Board to grant permission in the form of Special Permit to establish our version of a contemporary, compelling, environmentally friendly and sustainable green restaurant. Food is our common language. It brings us all together. Canteen founders Mr. Aaron Siegle and myself Jim Murray believe in a world where people can eat food that's great for them and great for our environment as well as great for local grow farmers and vendors. This helps contribute to making the planet a better place. Canteen's budget-friendly proven menu concept enhance and diversify the dining options in a neighborhood to void of healthy

quick serve food venues. A great neighborhood contains and is comprised of residents, a wide range of families, professionals, retired seniors, including a robust student population. It is also directly across from Cambridge College and is equal distant from both MIT and Harvard University.

Slow food is everything fast food is not. It's our idea in a way of living a way of eating. Slow food is a global grass roots movement attracting thousands of like-minded people from all around the world. The primary goal of slow food is to delivering the pleasures of food consumption with an unwavering commitment to community and environment.

CONSTANTINE ALEXANDER: Let me stop you for a second. We don't need to hear all about that, whether it's slow food or fast food. Tell us why you meet the requirements

of Section 11.30. That's where we have to make the relief.

DOUGLAS MYERS: Thank you, Gus.

JAMES MURRAY: So we have 11.30 fast food establishment. In considering applications the following requirements shall be met: The operation of the establishment shall not create traffic problems. 983 Mass. Ave. falls within a business zone district. In addition, please take note that 983 Mass. Ave. has continually operated as a neighborhood restaurant since 1978, known as the Friendly's Eating Place. This space shall cater to the densely populated neighborhood which surrounds it, and the majority of customers will be pedestrians.

With respect to 11.31.2 reduced available parking. The proposed site sits on Massachusetts Avenue which is lined with metered spaces. Additionally, there is

public parking located at the Central Square garage several blocks away.

That there would be -- threaten the public safety and the streets and sidewalks or encourage or produce double parking on the adjacent public street. Canteen shall follow all city ordinances relating to parking regulations. The physical design, including color and use of material shall be compatible with the physical characteristics of other buildings, public spaces and uses in the particular location. 983 Mass. Ave. as I mentioned earlier, was awarded in May of 2009 a certificate of merit by the City of Cambridge for it's excellent historic storefront restoration of historic property.

The establishment fulfills a need for such a service in the neighborhood or in the city. We feel there is clearly just such a need, as the only two quick serve restaurants on this block have both closed in recent

years; Friendly Eating Place and El Palomino. Therefore, our venue shall fill this void in neighborhood dining.

The establishment will attract patrons primarily from walk-in trade as opposed to automobile related trade. Indeed we believe this establishment will attract primarily walk-in trade as its 29 year operating history as evidenced. The establishment shall to the greatest extent feasible utilize biodegradable materials and packaging food, utensils and other items provided.

And if I might, when you referenced the fact that's environmentally friendly, I want to address this specifically. As an example, worldwide it's estimated that over four billion plastic bags end up as litter annually. That circles the other 63 times. These plastic bags never break down completely filling our landfills, and even worse, can end up in oceans harming wildlife.

In an effort to help reverse this alarming trend, Canteen will provide eco bags produced products manufactured using fair trade and fair labor.

CONSTANTINE ALEXANDER: Besides your eco bags what are you going to do for trash receptacles and the like to make sure people don't walk out and throw their eco bags out in the street?

JAMES MURRAY: Sure. Not only are we providing the eco bags. Aaron, if I may. You're drinking out this plastic cup.

CONSTANTINE ALEXANDER: I am.

JAMES MURRAY: We're going to do some very interesting things in our restaurant. One of them is we're going to provide all of drink vessels will be manufactured from green ware. This is made from 100% compostable material and is completely sustainable. Not only are those cups compostable, but we're going to be

offering sustainable bamboo utensils as well as a very interesting product that's made from the same material that will serve as our to-go containers. So, in addition to the sorts of disposables quote, unquote, that we're going to provide, we're also going to do some interesting things. We're not going to bring in any bottled beverages; Coca-Cola products, Pepsi products, anything of the sort. We're going to rely on quadruple water filtration system. And we're going to fill sustainable bottles and sell them to our public. We're going to make a very strong stand on environmental and recycling issues. To that end, aside from not bringing any of the large corporation products, we're going to provide a wonderful boutique soda fountain. So no cans, no bottles are going to come through our facility. We're going to rely on this green friendly and environmental disposals. We intend on being a leader in

Cambridge on this issue. As you may or may not know we've operated in town for eleven years with our current restaurant Arrow Street Crepes, La Creperie.

CONSTANTINE ALEXANDER: Up the street?

JAMES MURRAY: Yes.

CONSTANTINE ALEXANDER: You've been before us?

JAMES MURRAY: This has our third or fourth time because we've opened up restaurants around town. So as an operator we've got a pretty strong understanding of what's happening and feel like there should be more restaurants in our town leading the way, and that's why we're taking a very strong stand on this. And it's something that's highlighted in this BZA is one of the reasons we sit before you this evening. So I wanted to stress that this is something that we are wholeheartedly embracing and we think that

it's something -- that the neighborhood is going to support us on and take a very deep interest in, and that's why we're embracing it because we think that's it's the right thing to do.

CONSTANTINE ALEXANDER: Waste receptacles within the structure, you're going to maintain near the door as you walk out?

JAMES MURRAY: Much like our current restaurants -- even though we're fast food, we have for eleven years provided ceramic plates and metal cutlery for example. We recycle more than 90 percent of the recyclable materials. And we believe very much that this is something that's important and should be more widely embraced by the city. So we think that the combination of our delicious food, our operating history and this great neighborhood spot bodes well for our prospects. We plan on being in the

neighborhood for a number of years, and we certainly hope you consider our petition.

CONSTANTINE ALEXANDER: Thank you. What are going to be your hours of operation?

JAMES MURRAY: We'd like to seek permission to operate similar hours as our current restaurant which is seven a.m. to midnight. We are likely not to operate in that window. For instance, even though we have permission to operate seven to midnight, we operate between eleven and ten, those are the hours that work for the neighborhood. We wanted to tailor that to what's happening with the neighbors.

CONSTANTINE ALEXANDER: And the plan in terms of what it's going to look like interior wise and exterior, are these four pages right here?

JAMES MURRAY: There's going to be no substantive changes to the exterior. Inside, as you know, it's a small space. It

sits in about 900 square feet. We're working with Epstein and Joslin local Cambridge architects on Arrow Street. They're designing our space as we speak. We know that -- how important it is to design a space -- in fact, what we're doing is we're using sustainable building materials.

CONSTANTINE ALEXANDER: One of the reasons I ask the question, one of the findings we have to make is the physical design, including color and use of materials of the establishment shall be compatible with and sensitive to the visual and physical characteristics of the other buildings, public spaces and uses in the particular location.

I don't have anything in our files that allows me to make that finding.

JAMES MURRAY: Sure. We have pictures. There's a picture in your file, is there not?

CONSTANTINE ALEXANDER: That's what the building looks like right now?

JAMES MURRAY: That's after its beautification.

THOMAS SCOTT: That's after the renovation, the exterior was renovated.

JAMES MURRAY: Indeed.

CONSTANTINE ALEXANDER: What's the color going to be?

JAMES MURRAY: Well, it's got a wonderful mural which was part of the award of merit on the side that's on Dana Street which is 50 feet of storefront. The front of the building which is married to the cleaners which is next-door, and that's makes up about 50 feet of both storefronts with beautiful windows in the front. We're not going to change anything on the outside. And as for the inside, we're gonna use, again -- you know, this -- we're actually working under the guidelines set by the green restaurant

certification program. Some of you may or may not be familiar with it. We're going to leave a copy for the record here. But we're going to be -- we're going to be using sustainable building materials, because it's our goal to ultimately be certified a green restaurant. So to that end, it's important that we do use and we have every intention of using sustainable materials, adhesives that are environmentally friendly. We're using bamboo tables bought from the Door Store. We're working with a lot of local vendors. And endorsing these sustainable products, and that's what we intend to on doing.

THOMAS SCOTT: Is it handicapped accessible?

JAMES MURRAY: It is indeed. We're going to seek permission for 19 seats, because it is such a small space and it is completely ADA accessible.

CONSTANTINE ALEXANDER: Is there

any members of the audience who want to speak on this matter?

(No response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to speak. I don't see anything in the file from anybody.

Questions from members of the Board?  
Comments?

CONSTANTINE ALEXANDER: I'm going to make the motion.

DOUGLAS MYERS: A couple of questions.

CONSTANTINE ALEXANDER: Go ahead.

DOUGLAS MYERS: What's going to be the ratio between the amount of your sales that are consumed on the premises and the amount that is taken out? Do you have any projections about that?

JAMES MURRAY: I would have to say that we expect a higher percentage of to-go business because we're 19 seats and in a busy

neighborhood, and have fairly long operating hours. We think that we're going to do a fair amount of to-go business and take away. And that's why we've indeed worked so hard to provide our plan to disposables if you will.

DOUGLAS MYERS: What sort of wrappers will you have for your takeout food?

JAMES MURRAY: That's a great question. So we're going to provide -- one of the things in green -- we can't have any polystyrene products. This is predominantly a gourmet sandwich shop that has breakfast items, and what we're referencing as --

DOUGLAS MYERS: I didn't hear your answer about the wrappers.

JAMES MURRAY: Sure. Relating to the wrappers because we're predominantly a sandwich shop, you'll see this item in green. That's an environmentally friendly sustainable sandwich wrapper. We're going

to set up an exchange program --

DOUGLAS MYERS: What's it made out of?

JAMES MURRAY: It's made out of the same materials that this is. Which is -- Aaron, do you have that? It's a polymer, PET. Plant-based polymer. So in addition to our fancy sustainable products we're going to also provide --

DOUGLAS MYERS: With regard to your gourmet products are they going to be cooked to order?

JAMES MURRAY: No. Well, some of them will be. But basically we're using a similar ala-minute sort of style of service unit. We will cook down 20 pounds of chicken in a day, and that 20 pounds will last us over the next two or three days.

DOUGLAS MYERS: Will it be sold in a wrapper?

JAMES MURRAY: It will be sold in a

sandwich and put in that environmentally friendly wrapper. Again, having provided disposables of every sort of make and kind of over these eleven years operating, I know that we need to take seriously this effort to reduce this impact to the environment. So everything we're providing is sustainable.

DOUGLAS MYERS: Will your customers order -- will they receive a menu when they walk in or will they order from a wallboard?

JAMES MURRAY: No, we're going to try to not generate a lot of things which are looked at one time and thrown in the garbage as we've seen with respect to menus. We're going to have menu boards that everyone can reference. A lot of our business we intend to do online which with the two web sites, one for the catering division and one for the restaurant.

DOUGLAS MYERS: You mentioned the number of 19 places. Is that your eating

capacity?

JAMES MURRAY: Yes, sir.

DOUGLAS MYERS: Do you have any idea how that compares with the eat-in capacity with the Friendly eat-in place?

JAMES MURRAY: I believe Friendly's was licensed for 25 people.

DOUGLAS MYERS: Can you tell me about the parking spaces that are located directly in front of your establishment?

JAMES MURRAY: Directly in front of our establishment on our side of the street is a bus stop. And in front of that are parking spaces and parking spaces --

DOUGLAS MYERS: In front of that you mean in the direction of Harvard Square?

JAMES MURRAY: Correct. Heading towards Harvard Square. And then to the left of us --

DOUGLAS MYERS: What's the nature of those places? Are they metered? Are there

signs?

JAMES MURRAY: There is the bus stop directly in front of us. And then there are metered spaces running the lengths of Mass. Ave. to the right and the left. Dana Street immediately abutting our property is a no parking sign. I think that had a lot to do with the width of the street. As people come down and meet Mass. Ave, so there's a no marking sign there. We have a parking lot with five spaces. We have access to two of them. So, you know, we won't be impacting the neighborhood by parking on the street.

CONSTANTINE ALEXANDER: Will those spaces be used by employees at the restaurants?

JAMES MURRAY: Yes. Most of the staff that I work with now and I imagine the staff that will be working in the new restaurant will commute in via bus or bike. So we feel that like that's the kind of the

type of worker that we attract. Younger workers, and most of them don't have cars.

CONSTANTINE ALEXANDER: Those who do have cars you're not going to add to the parking issues in the street because the employees are going to be parking behind?

JAMES MURRAY: That's correct. Aaron and I have conflicting schedules so one of our cars will be in the lot when we're working, and our principle full time manager will utilize the other space.

CONSTANTINE ALEXANDER: Doug?

DOUGLAS MYERS: All set. Thank you.

JAMES MURRAY: Thank you.

CONSTANTINE ALEXANDER: All right. We have to make a lot of motions here. So let's go get to work.

First, we have to make the findings that are necessary for the Special Permit generally, and then we have to make the

findings you touched upon about the special section 11.30 fast food establishment.

The Chair moves that a Special Permit to be granted to the petitioner to operate an environmentally friendly quick service cafe on the basis of the following findings:

That you can't meet the requirements of the ordinance simply because the ordinance requires that you get a Special Permit. So that speaks for itself.

That the traffic you're going to generate or patterns of access or egress would not cause congestion, hazard or substantial change in established neighborhood character. In fact, we're talking about a neighborhood that is very commercial, very busily trafficked, including a number of other eating establishments. That the kinds of traffic you would seem to be able to -- you intend to attract and likely to attract would be

pedestrian and would not therefore impact a certain automobile traffic.

That a continued operation or development of adjacent uses would not be adversely affected by what you're proposing.

You -- there is no, the nature of the cooking you're going to do is not going to create any smells of the like.

JAMES MURRAY: None offensively certainly.

CONSTANTINE ALEXANDER: Well put. And that nuisance or hazard would not be created to the detriment of the health, safety or welfare of the occupants. All you're going to do is create a (inaudible) process for the neighborhood and certainly the operation of a restaurant of certainly an environmentally friendly quick service cafe would not would not add -- would not create a nuisance or a hazard. And you will not impair the integrity of the district or

adjoining district. As I've said, this is a commercial district that has a number of businesses including other eating establishments, so not in a neighborhood or directly nearby a fast food establishment as defined by our Zoning By-Law which is one of the requirements we got to deal with next.

The Chair will further suggest that we make findings that the operation of the establishment -- I'm going to say comply with the requirements of Section 11.31 of our Zoning By-Law. The basis for the saying that you comply with these, I've already touched upon in dealing with the general requirements for a Special Permit. Specifically we're talking about an operation, a food operation that's going to primarily attract pedestrian traffic in an area that has a substantial amount of pedestrian traffic. It's not going to attract cars that would have been caused parking problems. That the physical

design has been approved by the city. In fact, you have a certificate of merit. That there is a need for a fast food service in the neighborhood as the petitioner has pointed out. Those fast food establishments in the neighborhood that have been there are gone now. You're replacing one of them, and the other has closed down, El Palomino.

That you certainly intend to the greatest extent feasible to utilize biodegradable material in packaging the food.

That you intend, and you've represented to us, you're going to establish a well marked waste receptacles.

And that your premises will comply with all state and local requirements applicable to egress and use of facilities for handicapped and disabled persons.

The Special Permit would be granted on the condition that the exterior of the

restaurant be in compliance with what you have presented to us as one page that I've initialed, will be part of the public record.

I think I got it all in. Anybody else have anything to add or subtract? Ready for a vote.

All those in favor of granting a Special Permit, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Sullivan, Scott, Heuer, Myers.)

(Whereupon, a discussion was held off the record.)

(11:15 P.M.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Thomas Scott, Tad Heuer, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9861, 400 Main Street. And you're here before us because you want to install an environmentally friendly -- the floor is yours. Mr. Braillard.

ATTORNEY ADAM BRAILLARD: Thank you, Mr. Chairman, members of the Board. For the record, my name is Adam Brailard. I'm with Prince, Lobel, Glovsky and Tye. We're on 100 Cambridge Street in Boston, Massachusetts, here on behalf of the applicant Sprint Spectrum. We're here in connection with a Special Permit to operate and maintain a communications facility on the rooftop of the existing building located at 400 Main Street. With me is Joan Cyr.

JOAN CYR: Cyr, C-y-r.

ATTORNEY ADAM BRAILLARD: Sorry.

JOAN CYR: That's okay.

ATTORNEY ADAM BRAILLARD: And we have her business card here. And also here is Brian Shannon. Brian and Joan are with MIT representing the property owners. And also here tonight is Joe Southerland, S-o-u-t-h-e-r-l-a-n-d. And Joe is part of the applicant's radio frequency department

if you have any questions.

Some of the Board members may or may not remember that this application was before the Board for a Special Permit back in the early part of 2007. And the Board granted a Special Permit and all the requirements for that Special Permit. And the footnote 49 back in March 8th of 2007. The Board also extended the Special Permit back the beginning of this year in January to September 8, 2009. So this past September. The applicant, and the reason why the applicant wasn't able to act on the application is because during the merger of the Nextel and Sprint companies, in their respective reorganizations, they weren't able to be in a position to start the construction. Essentially they got the permits before they realized that what the merger was going to entail, and the reorganization, and weren't able to pull the

trigger on construction. They are poised now and ready to go. And MIT is also on board and ready to go with the installation and construction.

The design is virtually identical to what the Board approved. The only difference is, which I'll get into the design, but the only difference is a result of what the Planning Board requested that the applicants do.

CONSTANTINE ALEXANDER: I'll read that into the record.

ATTORNEY ADAM BRAILLARD: Great. Other than that it's identical. So basically what the application proposes is we install 12 panel antennas, three antennas per sector. Sector A which will be facing the -- which will be installed on the penthouse facade. I think it's going to be facing east; will be four panel antennas, facade mounted painted to match the existing

penthouse first headed towards east -- headed east on Main Street.

Sector B is located in the southern part of the rooftop. And that, those four antennas will be concealed within four vent pipes. That the change from the prior application to this application is that sector. That sector was originally proposed to not have vent pipes and just have the antennas there, but because of the background and we were looking at the photo sims from the ground, there's a number of vent pipes already existing on that building. There's hundreds on that building, and we're proposing four more on the existing vent pipes. So just to put antennas there didn't look exactly symmetrical and correspond to the existing characteristics of the HVAC units currently on the roof. So we decided with MIT's request and the Planning Board's request to conform to the -- to those

suggestions and conceal those within vent pipes.

Sector C of the proposal will be toward the western top of the rooftop. And also those four antennas will be concealed within four vent pipes to the existing HVAC characteristics on the roof.

The second part of the installation is an equipment shelter where the radio equipment, the HVAC units will be housed. The original application back in '07 called for a much larger equipment shelter, 10 by 20. The applicant, through that process, was able to shrink down the equipment shelter to seven and a half by 13 by 8 feet tall and is consistent with that, and distance with that shelter size we're not increasing the shelter size.

Third aspect of the installation is the coaxial cable that will be running from the antennas to the equipment shelter. That

will be installed on sleepers on the deck not more than a foot above the deck. So they'd be out of view from the ground.

And the final installation is GPS antennas that, you know, one GPS antenna about six inches. It's about a six and a half inch cone that will be installed on the top of the equipment shelter that's going to have a southerly faced sky line view with no obstructions.

That's the installation in a nutshell. I can -- my plan is to go into the requirements of the by-laws, certainly 49.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY ADAM BRAILLARD: There's a number of requirements. The first major requirement with respect to any installation. The second set of requirements are with respect to the installation within a residential district. This is in a residential district that's also

partly in a mixed use residential overlay district so it's a little confusing. Essentially it's the same relief.

The first requirement is that the applicant show that it's a licensed by the FCC. The application that we provided to the Board has an FCC license within that, and I can attest that the applicant is licensed by the FCC to operate a wireless system in the Greater Boston area including the City of Cambridge.

The second requirement is that the visual impact that has been minimized. And I think by installing the antennas on the facade of the penthouse painted to match and installing the remainder of the antennas within faux vent pipes with the existing vent pipes on the roof and reducing the size of the equipment shelter that we have minimized the extent of any visual impact for the installation.

The third requirement in this requirement is essentially broken up into about six different sub-requirements is when the applicant proposes to install this type of facility within a residential district. The first requirement in that particular instance, and that's the case here, we're in a Residential B I think -- C-3B zoning district which is mixed use overlay is that we show there is a public need. The applicant has performed radio frequency studies of the city in general and specifically from this area, and has determined that there is an existing gap in reliable service coverage on the MIT campus along Main Street, along Vassar Street. And it's further determined that that will further cover this area. Joan is here, she can attest to the fact that there is not reliable coverage on a street and buildings for their first responders and for their

students. So that's why we believe that there's a public need.

The second requirement is that there's no alternatives in non-residential locations. The intent of this installation is to, as I just said, is to predominantly cover the MIT, that part of the MIT campus along with Main Street and Vassar and Ames Street as well.

We looked at a number of different buildings on the MIT campus, and in a joint kind of partnership with MIT, determined that because this particular building is in a mixed use is on a -- abuts two major thoroughfares in a residential non-residential uses, and the building itself is non-residential, that this would be the ideal building. It is leasable in that instance because MIT wants us there. It is able to be constructed based on our feasibility studies. It's potentially

zoneable, provided we meet this criteria, and it works. From a radio frequency standpoint it does what, it enhances the existing coverage needs and adequately covers that gap that I just spoke about in coverage.

The third requirement that the third and fourth essentially that the by-law requires the applicant show is that there's -- that it conforms to the existing mechanical systems and equipment on nearby structures. And I think that includes the building, the subject building and the characteristics of the uses in the area. I talked about the building. It has a number of HVAC units. I think if you know this rooftop, the first thing you see when you look at this building are these two humongous probably eight feet in diameter probably vent pipes on the side of the building. These are going to be less than a foot or a foot in diameter consistent with the other vent pipes

in the building. If you look at the other buildings, if you do a Google search, buildings in the area, there are a number of large buildings that are non-residential that are -- that have a number of different mechanical and HVAC units on the roof. So we believe that we conform to the and are similar to the existing characteristics of rooftops in that area.

The second to last requirement of footnote 49 is that we show that nonresidential use predominate in a vicinity. I kind of talked a little bit about that. It's -- we're on this -- we'll start with the subject building. It is nonresidential. It is an MIT student building. I believe it's used for --

JOAN CYR: General offices, lab space.

ATTORNEY ADAM BRAILLARD: So it's as Joan said.

JOAN CYR: It houses the facilities department.

ATTORNEY ADAM BRAILLARD: That's right. It houses the facility department. It's laboratory space, nonresidential. If you're looking at the building north, if you go north on across the street on Main Street, first of all, you're passing over a major thoroughfare that's a nonresidential thoroughfare. It just doesn't access to residents. And you -- there are two properties over there, two office properties. I think they're owned by Boston Properties. Those are not residential as well.

If you head to the east of the parcel, there is a hotel, I believe, on the same side of the street. Main Street has the subject parcel and then there's a bank -- there's actually two banks, one on each side of the street. So again, no actual residential

uses or multiuse single-family residential uses there. As you look directly to the south, there's another MIT again used for laboratory purposes based on the HVAC units and condensers and the vent pipes that are on that -- the rooftop of that building.

And then when you look to the west across Ames Street, that's another MIT building not used for residential purposes. That's again, that's a laboratory building and a technical laboratory building. And as you look kind of further south and west, you get more into the heart of the MIT buildings. And then you finally get into a little bit of the dormitories, but that's much further away. I don't think that would be considered in a vicinity because we're 5 or 6 or 70 feet away from the property at that point.

To the final criteria that the applicant needs to prove is the proposed facility is not inconsistent with the

prevailing character of the area. And I think what that does is it's more or less a catch all to what we just spoke it. I think we can determine or the applicant determines that the nonresidential use is predominate. That the proposal is consistent with the existing characteristics but the building but also the vicinity, the rooftops of the vicinity the buildings -- excuse me, of the buildings in the vicinity. And I think that's about it.

CONSTANTINE ALEXANDER: Thank you.

ATTORNEY ADAM BRAILLARD: I apologize. I wanted to catch everything.

DOUGLAS MYERS: You did I think.

ATTORNEY ADAM BRAILLARD: That's it.

CONSTANTINE ALEXANDER: I'll read into the record, we have -- the only correspondence we have are two letters from the Planning Board. We should make these

part of the record.

The first is a letter dated October 27, 2009 regarding this case. "The Planning Board reviewed the resubmission of the antenna installation of 400 Main Street and has the same comments that were forwarded in 2006 and 2007. The ballast mounted antenna proposed for the rooftop does not comply with the design criteria outlined in footnote 49 as it is a freestanding structure that does not blend with the existing rooftop fixtures. Community development staff communicated these concerns to the applicant's representative and was told that the ballast mounted antenna would be changed to be mounted in a fiberglass vent pipe and arranged in such a way as to mimic the existing vent pipe pattern on the roof. But the approach sounds promising. The change has not been presented to the Planning Board whose next meeting is November 10th after the

public hearing." Referring to our public hearing.

Then there's a letter dated November 2nd from the Planning Board saying: "The Planning Board staff met with the representative of the applicant and the owner to discuss revisions to the antenna installation. Since the Planning Board will not be meeting again before the scheduled Board of Zoning Appeal meeting on November 5th, the Community Development Department staff reviewed the proposal to replace the sled mounted antenna installation with a stealth type using fiberglass cylinders to mimic the existing flew pipes on the roof of 400 Main Street. These pipes will be at the same height as the existing pipes and be arranged in a neat and orderly way, thereby resenting a more coordinated installation. The CDD staff believes this change addresses the Planning Board's concerns."

I take it the plans we have before us tonight are the plans that are referred to in this letter are revised?

ATTORNEY ADAM BRAILLARD: That's right. I dropped off a number of sets of plans, the color plans on Monday.

CONSTANTINE ALEXANDER: These are the photo simulations, too? These are consistent with what the changes that you showed to the CDD staff?

ATTORNEY ADAM BRAILLARD: That's right. Really what the CDD was concerned about are the first two, I think first two or three actual photos sims after the aerial map. That's the view, the first view.

DOUGLAS MYERS: No, no, I see.

ATTORNEY ADAM BRAILLARD: I can pass these around.

CONSTANTINE ALEXANDER: I've seen them. While Doug is looking at those, is there anyone here wishing to be heard?

(No response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard.

Comments, questions from members of the Board?

DOUGLAS MYERS: Don't wait on me.

CONSTANTINE ALEXANDER: We are. I'm going to make a motion. I don't want to make a motion until you're ready for the motion.

DOUGLAS MYERS: No, I have no questions.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that a Special Permit be granted to the petitioner on the basis of the following findings:

The Board finds that the proposal will not cause congestion, hazard or substantial change in established neighborhood character. In fact, these antenna mounted on the rooftop except for maybe birds, won't

affect the patterns of egress or access.

The proposed installation will not obstruct existing rights of way or pedestrian's access to the property.

The continued operation of development of the adjacent uses of permitted to the Zoning Board would not be adversely affected by the nature of the proposed use. This is an area that's generally an office building or nonresidential types of buildings and in no way will these antenna affect the ability of the uses to be -- the adjoining buildings to the use as they're presently used.

And no nuisance or hazard would be created to the detriment of the health, safety or welfare of the occupants. We're talking about telecommunications antenna on a rooftop.

And that it will not -- and the proposed installation will not impair the integrity of the district or derogate from the intent or

purpose of this ordinance.

With regard to that I would note that the plans as proposed before us have been vented with the Planning Board and the CDD staff and have received the recommendation from the folks.

We would further find, as we're required to find, that nonresidential uses predominate in the vicinity of the proposed vicinity's location. Applicant has submitted persuasive evidence to that effect. And that the telecommunications facility is not inconsistent with the character that does prevail in the surrounding neighborhood. And we've touched upon that as well. We're not talking about a single-family houses surrounding this structure, but rather an area of buildings very much like the building on which this antenna, these telecommunication antennas are supposed to be installed.

That there is a demonstrated public need for the facility at the location. The petitioner has submitted evidence to that effect, which we accept on its face.

That there are no really alternative functions, suitable sites in nonresidential locations, and that the character of prevailing uses in the area -- I'll stop right there.

Also, that we are required to seek a finding -- consider whether the visual impact of the various elements will be minimized. And as I've indicated before, they will be as per the plans submitted, and as evidenced by the approval that these plans have gotten from the Planning Board and the CDD staff.

The Special Permit would be granted on the condition that the work proceed in accordance with the plans submitted by the petitioner. They are dated, most recent date would be 10/29/09. They are T1, Z1, Z2,

Z3, and that's it. The first page of which has been initialed by the Chair.

And on the further condition that the work proceed in accordance with and consistent with the photo simulations that were submitted by the petitioner. They were prepared by Dewberry, D-e-w-b-e-r-r-y and the first page of which has been initialed by the Chair.

The Special Permit would be granted on the further condition that should these -- this equipment not be used any longer, that they be promptly removed, and the building be restored to the extent possible to the condition as it was prior to the installation of these antenna. That's the usual requirements. Anything else? Ready for a vote?

All those in favor of granting a Special Permit on that basis, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in  
favor. Special Permit permit granted.

(Alexander, Sullivan, Scott, Heuer,  
Myers.)

(11:35 P.M.)

(Sitting Members: Constantine Alexander,  
Brendan Sullivan, Thomas Scott, Tad Heuer,  
Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will reconvene the case that was involving 41 Hawthorn Street, case No. 9858. We recessed this case to allow you to make some changes to plans so we can then move it to a vote. So the floor is yours.

DOUGLAS OKUN: We worked with Sean and we developed this drawing. And what it shows is that the setback on the left and the setback on the right, which is an average of 20, 10 here and 10 here, puts the setback line three feet in from the side of the building. So this is six feet, something like that. And our roof -- so this line here is -- this line here, which is three feet in from the facade and the leading edge of our window, not the glass, is four feet. So we're not in the setbacks except at the back. So there's only these two or three that are in the setback.

TAD HEUER: You mean this one?

DOUGLAS OKUN: This one is the same

condition.

TAD HEUER: But this one here misses on the rear setback as well, correct?

DOUGLAS OKUN: Quite honestly I don't know. If not, it's very close.

SEAN O'GRADY: We only test in a direction that the window faces. So the side windows actually were they even --

TAD HEUER: Okay.

CONSTANTINE ALEXANDER: Satisfied?

TAD HEUER: Yes.

CONSTANTINE ALEXANDER: Sean, are you satisfied, too?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: Okay. As we make the motion, I'm going to tie it to what you've given to us as well as the plans you originally submitted because some of them show the actual dimensions of the recess. We're ready for a vote?

The Chair moves to grant the petitioner

the Special Permit requested on the basis of the following findings:

That the requirements of the ordinance cannot be met without the granting of the Special Permit, and since we're talking about adding lighting or windows, I guess better characterized as the skylights in the setbacks of a non-conforming structure.

That the nature of what we're talking about are skylights at the rooftop level will not impact traffic or patterns of access or egress or cause congestion, hazard or substantial change in established neighborhood character.

That the continued operation of adjacent uses would not be adversely be affected. The nature of these changes are not such that it would affect the privacy of abutters.

And the Chair would further note in support of this is that no abutter has come

forth or anyone else has come forth to object to the proposed relief. And that nuisance or hazard would not be created by the addition of these skylights in a setback.

And that the proposed use would not impair the integrity of the district or otherwise derogate from the intent or purpose from the ordinance. In fact, it would further the purposes of the ordinance since that would make the living space much more inhabitable in providing the lighting, the light as it flows into this property.

The Special Permit would be granted on the condition that the work proceed in accordance with a plan of land prepared by Bradford Engineering and modified by the petitioner to show the location of the windows in relation to setbacks, and which have been initialed by the Chair.

And on the further condition that the work proceed in accordance with other plans

submitted by the petitioner prepared by Douglas Okun and Associates, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 pages, the first page of which has been initialed by the Chair.

All those in favor of granting the Special Permit on the basis proposed, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

(Whereupon, at 11:45 p.m. the meeting adjourned.)

**C E R T I F I C A T E**

**COMMONWEALTH OF MASSACHUSETTS  
BRISTOL, SS.**

I, Catherine Lawson Zelinski, a  
Certified Shorthand Reporter, the  
undersigned Notary Public, certify that:

I am not related to any of the parties  
in this matter by blood or marriage and that  
I am in no way interested in the outcome of  
this matter.

I further certify that the testimony  
hereinbefore set forth is a true and accurate  
transcription of my stenographic notes to the  
best of my knowledge, skill and ability.

**IN WITNESS WHEREOF**, I have hereunto set  
my hand this 20th day of November 2009.

---

Catherine L. Zelinski  
Notary Public  
Certified Shorthand Reporter  
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